



Overview of Historical Offenses

Utah Sex & Kidnap Offender Registry

OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

Judiciary Interim Committee
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Outline

- 1) What historical offenses may require registration?**
- 2) What historical offenses may require lifetime registration?**
- 3) Do these historical offenses qualify for removal?**



Retroactivity

- **Statutes are not retroactive, unless expressly stated to be retroactive. See Utah Code § 68-3-3; *State v. Clark*, 251 P.3d 829, 833 (Utah 2011).**
 - “Generally, retroactive application of statutes ‘is not favored in the law.’” *Warne v. Warne*, 275 P.3d 238, 245 (Utah 2012) (citation omitted).
 - “Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and conform their conduct accordingly.” *Landgraf v. USI Film Products*, 511 U.S. 244, 266 (1994).
- **Even though the Legislature amends a statute, the statute does not apply to past conduct, events, or circumstances, unless the Legislature expressly says so in the statute.**



Retroactivity

- **What does retroactivity mean for the Sex and Kidnap Offender Registry?**
 - An offender is subject to the law in place at the time the offender is required to be registered by the department or agency. See Utah Code § 77-41-104.
 - Therefore, subsequent amendments to registerable offenses do not apply to already registered offenders.

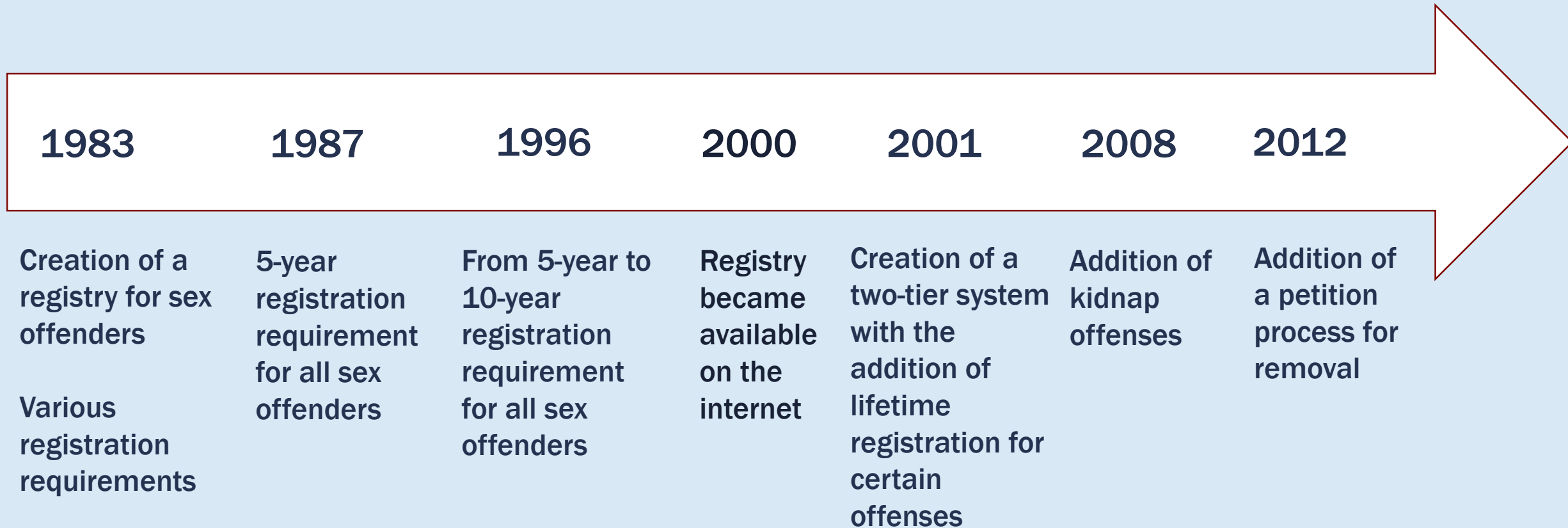


Legislative Amendments

- **1983**
 - HB 209
- **1984**
 - HB 48
- **1987**
 - SB 14
- **1989**
 - HB 201
- **1991**
 - HB 246
- **1992**
 - HB 400
- **1994**
 - SB 8
- **1995**
 - HB 230
- **1996**
 - HB 15
- **1997**
 - HB 348
- **1998**
 - HB 362
- **2000**
 - SB 270
- **2001**
 - HB 22
 - HB 181
 - HB 237
 - HB 1002
- **2002**
 - HB 245
- **2006**
 - HB 56
 - HB 158
 - HB 410
- **2007**
 - HB 5
- **2008**
 - HB 34
 - HB 63
 - HB 492
- **2009**
 - HB 29
 - HB 41
 - HB 136
 - HB 247
- **2010**
 - HB 21
 - HB 125
 - HB 209
 - HB 276
 - HB 365
- **2011**
 - SB 106
 - SB 159
- **2012**
 - HB 13
 - HB 17
 - HB 18
 - HB 234
 - HB 282
- **2014**
 - SB 177
- **2015**
 - HB 215
- **2016**
 - HB 16
- **2017**
 - HB 222
- **2019**
 - HB 75
 - HB 298



Highlighted Changes





First Question

What historical offenses might require registration?



Creation of a Registry

1983

- **10 Offenses**
 - Any person convicted, either before or after the act, in Utah, of any sexual offense listed in Part 4, Chapter 5, Title 76:
 - Unlawful sexual intercourse
 - Rape of a child
 - Rape
 - Object rape
 - Forcible sodomy
 - Sodomy
 - Sodomy on a child
 - Forcible sexual abuse
 - Sexual abuse of a child
 - Aggravated sexual assault
- Any attempt of these offenses



Current Law

(Utah Code § 77-41-102(9) and (17))

27 Offenses

- **Any individual other than the natural parent of the victim who has been convict in this state of:**
 - Child kidnapping
 - Aggravated kidnapping
 - Kidnapping, Subsection 76-5-301(1)(c) or (d)
 - Aggravated human trafficking
- **Attempting, soliciting, or conspiring to commit any felony listed**
- **An individual who is convicted in this state of:**
 - Enticing a minor (Class A Misdemeanor or Felony)
 - Sexual exploitation of a vulnerable adult
 - Unlawful sexual activity with a minor (Felony)
 - Sexual abuse of a minor (Unless under 21 and first offense)
 - Unlawful sexual conduct with a 16 or 17 year old
 - Rape
 - Rape of a child
 - Object rape
 - Object rape of a child
 - Forcible sodomy
 - Sodomy on a child
 - Forcible sexual abuse
 - Sexual abuse of a child
 - Aggravated sexual abuse of a child
 - Aggravated sexual assault
 - Custodial sexual relations with a victim younger than 18 years old
 - Sexual exploitation of a minor
 - Incest
 - Lewdness (4 convictions)
 - Sexual battery (4 convictions)
 - Any combination of 4 convictions of lewdness or sexual battery
 - Sexual extortion
 - Aggravated sexual extortion
 - Aggravated exploitation of prostitution
- **Any attempt, solicitation, or conspiracy to commit any felony offense listed**



What historical offenses might require registration?

- **Effective : April 29, 1996 to April 30, 2001**
 - Any person who entered into a plea in abeyance for an offense requiring registration
- **Effective : April 30, 2001 to May 6, 2002**
 - A class B and C misdemeanor violations of enticing a minor
 - Including attempt, solicitation, or conspiring to commit
- **Effective : May 7, 1997 to May 5, 2008**
 - Child kidnapping if the offender is the natural parent of the victim
 - Including attempt, soliciting, or conspiring to commit
- **Effective : May 5, 2008 to May 12, 2009**
 - Unlawful detention
- **Effective : May 5, 2008 to May 11, 2010**
 - Kidnapping, Subsection 76-5-301(1)(a) or (b)
 - Including attempt, soliciting, or conspiring to commit
- **Effective : April 30, 2001 to May 10, 2016**
 - A class A misdemeanor violation of sexual abuse of a minor if a first offense and the offender is younger than 21
- **Effective : April 30, 2001 to May 14, 2019**
 - Unlawful sexual activity with a minor if the offender is younger than 21 years old at the time of the sexual activity
 - Including attempt, soliciting, or conspiracy to commit



Second Question

What historical offenses might require lifetime registration?



Lifetime Offenses

2001

- **5 Offenses**

- Rape of a child
- Object rape of a child
- Forcible sodomy
- Sodomy on a child
- Aggravated sexual assault

- **Two separate convictions of an offense requiring 10-year registration**



Current Law

Utah Code §§ 77-41-105(3)(c), 77-41-106

15 Offenses

- **A conviction for any of the following offenses:**
 - Aggravated kidnapping, except if the offender is a natural parent of the victim;
 - Sexual abuse of a child;
 - A felony violation of enticing a minor over the internet;
 - A felony violation of forcible sodomy;
 - Sexual exploitation of a minor;
 - Aggravated sexual extortion;
 - Aggravated exploitation of prostitution if the conviction was on or after May 10, 2011;
- **A conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit a felony offense:**
 - Child kidnapping, except if the offender is a natural parent of the victim;
 - Rape;
 - Rape of a child;
 - Object rape;
 - Object rape of a child;
 - Sodomy on a child;
 - Aggravated sexual abuse of a child; or
 - Aggravated sexual assault;
- **At the time of conviction:**
 - The offender has two separate convictions of an offense requiring 10-year registration
 - The offender was previously required to register as a sex offender for an offense committed as a juvenile



What historical offenses might require lifetime registration?

- **Effective: July 1, 2006 to May 5, 2008**
 - Child kidnapping if the offender is the natural parent of the victim
 - Incest
- **Effective: March 19, 2007 to May 5, 2008**
 - A class A misdemeanor violation of enticing a minor



Third Question

Do these historical offenses qualify for removal?



Historical Offenses Specifically Addressed

- **Five-Year Petition**

- **A class A misdemeanor violation of enticing a minor**
 - Effective: March 19, 2007 to May 5, 2008
- **Kidnapping**
 - Subsection 76-5-301(1)(a) or (b), kidnapping
 - Effective: May 5, 2008 to May 11, 2010
- **Unlawful detention, if it is the only conviction that requires registration**
 - Effective: May 5, 2008 to May 12, 2009
- **Unlawful sexual activity with a minor if, at the time of the offense, the offender is not more than 10 years older than the victim**
 - Unlawful sexual activity with a minor if the offender younger than 21 years old at the time of the sexual activity
 - Effective: April 30, 2001 to May 14, 2019
- **Sexual abuse of a minor if, at the time of the offense, the offender is not more than 10 years older than the victim**
 - A class A misdemeanor of sexual abuse of a minor if a first offense and the offender is younger than 21
 - Effective: April 30, 2001 to May 10, 2016



Historical Offenses Not Addressed

- **Class B and C misdemeanor violations of enticing a minor**
 - Including any attempt, solicitation, or conspiring to commit either of these offenses
 - Effective: April 30, 2001 to May 6, 2002
- **Child kidnapping if the offender is the natural parent of the victim**
 - Including any attempt, soliciting, or conspiring to commit this offense
 - Lifetime registration only for committing the offense
 - Effective: July 1, 2006 to May 5, 2008
- **Incest (Lifetime Registration)**
 - Effective: July 1, 2006 to May 5, 2008
- **Attempt, soliciting, or conspiring to commit Subsection 76-5-301(1)(a) or (b), kidnapping**
 - Effective: May 5, 2008 to May 11, 2010



Review

- 1) There might be offenders on the registry for offenses that have since been removed by the Legislature as an offense.**
- 2) There might be offenders required to register for life for offenses that have since been removed as lifetime registration by the Legislature.**
- 3) There is a petition process that allows an offender to seek removal from the registry, but it only addresses certain offenses.**



Questions to Consider

- **Should an individual be eligible for removal from the registry for a historical offense?**
- **Should an individual with a historical lifetime requirement be eligible for removal from the registry?**
- **If so, how should removal be addressed?**
 - Petition process?
 - Complete removal?



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