

PENALTIES FOR SOLICITING MINORS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Duane E. Bourdeaux

This act modifies the Criminal Code to create the offense and penalties regarding enticing a minor over the Internet for sexual activity and to add this offense under the definition of "sex offender." This act includes a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

77-27-21.5, as last amended by Chapter 201, Laws of Utah 2000

ENACTS:

76-4-401, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-4-401** is enacted to read:

76-4-401. Enticing a minor over the Internet -- Elements -- Penalties.

(1) A person commits enticement of a minor over the Internet when, not amounting to an attempt, conspiracy, or solicitation under Section 76-4-101, 76-4-201, or 76-4-203, the person knowingly uses a computer to solicit, seduce, lure, or entice, or attempt to solicit, seduce, lure, or entice a minor or a person the defendant believes to be a minor to engage in any sexual activity which is a violation of state criminal law.

(2) It is not a defense to the crime of enticing a minor under Subsection (1), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(3) An enticement of a minor under Subsection (1) with the intent to commit:

(a) a first degree felony is a second degree felony;

(b) a second degree felony is a third degree felony;

(c) a third degree felony is a class A misdemeanor;

(d) a class A misdemeanor is a class B misdemeanor; and

(e) a class B misdemeanor is a class C misdemeanor.

Section 2. Section **77-27-21.5** is amended to read:

77-27-21.5. Sex offender registration -- Information system -- Law enforcement and courts to report -- Registration -- Penalty -- Effect of expungement.

(1) As used in this section:

(a) "Department" means the Department of Corrections.

(b) "Notification" means a person's acquisition of information from the department about a sex offender, including his place of habitation, physical description, and methodology of the offense, and other information as provided in Subsections (10) and (11).

(c) "Register" means to comply with the rules of the department made under this section.

(d) "Sex offender" means any person convicted by this state or who enters a plea in abeyance for violating Section 76-4-401, 76-7-102, 76-9-702.5, 76-5a-3, 76-10-1306, or 76-5-301.1 or of committing or attempting, soliciting, or conspiring to commit a felony, under Title 76, Chapter 5, Part 4, Sexual Offenses, and any person convicted by any other state or the United States government of an offense which if committed or attempted in this state would be punishable as one or more of these offenses. "Sex offender" also means all persons committed to a state mental hospital by reason of their mental incapacity and their commission or alleged commission of one or more offenses listed in this Subsection (1)(d).

(2) The department, to assist in investigating sex-related crimes and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on sex offenders and sex offenses; and

(b) make information collected and developed under this section available to the public.

(3) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection (1)(d), within three working days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(d), within five working days.

(4) Upon convicting a person of any of the offenses listed in Subsection (1)(d), or any lesser included offense, the convicting court shall within three working days forward a copy of the judgment and sentence to the department.

(5) A sex offender in the custody of the department shall be registered by agents of the department upon:

(a) being placed on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(6) A sex offender not in the custody of the department who is confined in a correctional facility not operated by or under contract to the department shall, upon release from confinement, be registered with the department by the sheriff of the county in which the offender is confined.

(7) A sex offender confined in a state mental hospital shall be registered with the department by the hospital. A sex offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(8) A sex offender shall, for ten years after termination of sentence, register annually and again within ten days of every change of his place of habitation.

(9) An agency that registers a sex offender on parole shall inform him of his duty to comply with the continuing registration requirements of this section, including:

(a) notification to an out-of-state agency of moving across state lines;

(b) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines; and

(c) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees.

(10) A sex offender shall provide the department with the following information:

- (a) all names or aliases the sex offender is or has been known by;
- (b) the sex offender's name and address;
- (c) a physical description, including the sex offender's age, height, weight, eye and hair color;
- (d) the type of vehicle or vehicles the sex offender drives; and
- (e) a current photograph of the sex offender.

(11) The department shall provide the following additional information:

- (a) the crimes the sex offender was charged with and convicted of;
- (b) a description of the sex offender's primary and secondary targets; and
- (c) a description of the sex offender's method of offense.

(12) (a) A sex offender who knowingly fails to register under this section is guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 90 days and also at least one year of probation.

(b) Neither the court nor the Board of Pardons and Parole may release a person who violates this section from serving a term of at least 90 days and of completing probation of at least one year. This Subsection (12)(b) supersedes any other provision of the law contrary to this section.

(13) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, information in Subsections (10) and (11) collected and released under this section is public information.

(14) (a) If a sex offender is to be temporarily sent outside a secure facility in which he is confined on any assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (14) does not apply to any person temporarily released under guard from the institution in which he is confined.

(15) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a person convicted of any offense listed in Subsection (1)(d) is not relieved from the responsibility to register

under this section.

(16) Notwithstanding Section 42-1-1, a sex offender may not change his name while under the jurisdiction of the department and until the registration requirements of this statute have expired.

(17) The department may make rules necessary to implement this section, including:

- (a) the method for dissemination of the information; and
- (b) instructions to the public regarding the use of the information.

(18) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections (10) and (11).

(19) Nothing in this section shall be construed to create or impose any duty on any person to request or obtain information regarding any sex offender from the department.

(20) If the department chooses to post registry information on the Internet, the website shall contain a disclaimer informing the public of the following:

- (a) the information contained on the site is obtained from sex offenders and the department does not guarantee its accuracy;
- (b) members of the public are not allowed to publicize the information or use it to harass or threaten sex offenders or members of their families; and
- (c) harassment, stalking, or threats against sex offenders or their families are prohibited and doing so may violate Utah criminal laws.

(21) The department shall construct the website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(22) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this section and will be presumed to have acted in good faith by reporting information.

(23) The department shall redact information that, if disclosed, could reasonably identify a victim.

(24) The website may also include information about sex offenders ordered to accept

notification of their registry information as part of a condition of probation or parole.

Section 3. Coordination clause.

(1) If this bill and H.B. 237, Sex Offender Registry, both pass, it is the intent of the Legislature that in preparing the database for publication the Office of Legislative Research and General Counsel be directed to insert the amendment in Section 77-27-21.5 from 1st Sub. H.B. 181 into Subsection 77-27-21.5(1)(d)(i) from H.B. 237 to read as follows:

"(A) Section 76-4-401, enticing a minor over the Internet;".

(2) Renumber the remaining subsections accordingly.