

**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 penalty regarding soliciting a minor for sexual activity and an enhanced penalty for the offense of traveling for the purpose of engaging in a sexual activity with a minor.**

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:

**76-5-401.3**, Utah Code Annotated 1953

**76-5-401.4**, Utah Code Annotated 1953

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

Section 1. Section **76-5-401.3** is enacted to read:

**76-5-401.3. Soliciting a minor -- Elements -- Penalties.**

(1) As used in this section:

(a) "Adult" means a person who is 18 years of age or older.

(b) "Communicate" means any written, verbal, or physical act which is intended to communicate with a minor and includes, but is not limited to, contacting a minor by means of mail, telephone, or computer, or speaking face-to-face to the minor.

(c) "Minor" means a person who is younger than 16 years of age at the time the violation of Subsection (2) occurred.

(d) "Sexual act" or "sexual activity" means any sexual behavior which is a violation of state criminal law.

(e) "Sexual contact" means that the defendant caused, with the intent to arouse or gratify the sexual desire of any person, self contact by a minor or physical contact between:

28 (i) a minor and the defendant;

29 (ii) two or more minors; or

30 (iii) a minor and one or more adults.

31 (2) A person commits solicitation of a minor when the person knowingly communicates  
32 with a minor with the intent to solicit, seduce, lure, or entice or attempt to solicit, seduce, lure, or  
33 entice a minor or a person the defendant believes to be a minor for the purpose of sexual contact  
34 or any sexual activity.

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

38 (4) A solicitation of a minor under Subsection (2) with the intent to commit:

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

40 (b) a third degree felony is a third degree felony; and

41 (c) a class A misdemeanor is a class A misdemeanor.

42 Section 2. Section **76-5-401.4** is enacted to read:

43 **76-5-401.4. Transportation of minors -- Travel with intent to engage in sexual act**  
44 **with a minor -- Elements -- Penalties.**

45 (1) As used in this section, "minor" means a person who is younger than 16 years of age  
46 at the time the offense described in this section occurred.

47 (2) A person who knowingly causes a minor to travel or transports a minor with the intent  
48 to engage in a sexual act is guilty of a second degree felony.

49 (3) A person who travels, or conspires to travel, for the purpose of engaging in a sexual  
50 act with a minor is guilty of a second degree felony.

51 (4) A person who violates Subsection (2) or (3) shall serve, in jail or another correctional  
52 facility, a minimum of:

53 (a) 60 consecutive days for a first offense; and

54 (b) six months for each subsequent offense.

55 (5) The court may suspend the imposition or execution of the sentence required under  
56 Subsection (4) if the court finds that the interests of justice would be best served and makes  
57 specific findings concerning the disposition on the record.

58 Section 3. Section **77-27-21.5** is amended to read:

59           **77-27-21.5. Sex offender registration -- Information system -- Law enforcement and**  
60 **courts to report -- Registration -- Penalty -- Effect of expungement.**

61           (1) As used in this section:

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

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

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

67           (d) "Sex offender" means any person convicted by this state or who enters a plea in  
68 abeyance for violating Section 76-5-401.3, 76-5-401.4, 76-7-102, 76-9-702.5, 76-5a-3,  
69 76-10-1306, or 76-5-301.1 or of committing or attempting, soliciting, or conspiring to commit a  
70 felony, under Title 76, Chapter 5, Part 4, Sexual Offenses, and any person convicted by any other  
71 state or the United States government of an offense which if committed or attempted in this state  
72 would be punishable as one or more of these offenses. "Sex offender" also means all persons  
73 committed to a state mental hospital by reason of their mental incapacity and their commission or  
74 alleged commission of one or more offenses listed in this Subsection (1)(d).

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

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

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

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

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

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

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

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

90 department upon:

91 (a) being placed on probation;

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

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

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

98 (e) termination of probation or parole.

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

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

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

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

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

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

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

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

115 (a) all names or aliases the sex offender is or has been known by;

116 (b) the sex offender's name and address;

117 (c) a physical description, including the sex offender's age, height, weight, eye and hair  
118 color;

119 (d) the type of vehicle or vehicles the sex offender drives; and

120 (e) a current photograph of the sex offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

156 (a) the information contained on the site is obtained from sex offenders and the department  
157 does not guarantee its accuracy;

158 (b) members of the public are not allowed to publicize the information or use it to harass  
159 or threaten sex offenders or members of their families; and

160 (c) harassment, stalking, or threats against sex offenders or their families are prohibited  
161 and doing so may violate Utah criminal laws.

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

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

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

171 (24) The website may also include information about sex offenders ordered to accept  
172 notification of their registry information as part of a condition of probation or parole.

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**Legislative Review Note**  
**as of 1-15-01 3:36 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**