

CRIMINAL LAW AMENDMENTS

2001 FIRST SPECIAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

This act modifies the Criminal Code, the Code of Criminal Procedure, and the Judicial Code to make technical corrections and to give the Board of Pardons and Parole discretion regarding the appointment of alienists for the examination of certain offenders. This bill takes effect upon approval.

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

AMENDS:

76-5-205, as last amended by Chapters 2 and 90, Laws of Utah 1999

76-6-202, as last amended by Chapter 359, Laws of Utah 2001

77-27-7, as last amended by Chapter 301, Laws of Utah 2001

77-27-21.5, as last amended by Chapters 17, 298 and 353, Laws of Utah 2001

78-5-120, as repealed and reenacted by Chapter 122, Laws of Utah 2001

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

Section 1. Section **76-5-205** is amended to read:

76-5-205. Manslaughter.

(1) Criminal homicide constitutes manslaughter if the actor:

(a) recklessly causes the death of another;

(b) commits a homicide which would be murder, but the offense is reduced pursuant to

Subsection 76-5-203~~(3)~~(4); or

(c) commits murder, but special mitigation is established under Section 76-5-205.5.

(2) Manslaughter is a felony of the second degree.

Section 2. Section **76-6-202** is amended to read:

76-6-202. Burglary.

(1) An actor is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit:

(a) a felony;

- (b) theft;
- (c) an assault on any person;
- (d) lewdness, a violation of Subsection 76-9-702(1);
- (e) sexual battery, a violation of Subsection 76-9-702(3); or
- (f) lewdness involving a child, in violation of Section 76-9-702.5.

(2) Burglary is a felony of the third degree unless it was committed in a dwelling, in which event it is a felony of the second degree.

(3) A violation of this section is a separate offense from any of the offenses listed in [Subsection] Subsections (1)(a) or (1)(b) through (f), and which may be committed by the actor while he is in the building.

Section 3. Section **77-27-7** is amended to read:

77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists -- Mental competency.

(1) The Board of Pardons and Parole shall determine within six months after the date of an offender's commitment to the custody of the Department of Corrections, for serving a sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and shall promptly notify the offender of the date.

(2) Before reaching a final decision to release any offender under this chapter, the chair shall cause the offender to appear before the board, its panel, or any appointed hearing officer, who shall personally interview the offender to consider his fitness for release and verify as far as possible information furnished from other sources. Any offender may waive a personal appearance before the board. Any offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

(3) (a) In the case of an offender convicted of violating or attempting to violate any of the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1,

76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, the chair [shall] may appoint one or more alienists who shall examine the offender within six months prior to a hearing at which an original parole date is granted on any offense listed in this Subsection (3).

(b) The alienists shall report in writing the results of the examination to the board prior to the hearing. The report of the appointed alienists shall specifically address the question of the offender's current mental condition and attitudes as they relate to any danger the offender may pose to children or others if the offender is released on parole.

(4) The parolee may petition the board for termination of lifetime parole as provided in Section 76-3-202 in the case of a person convicted of a first degree felony violation or convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405.

(5) In any case where an offender's mental competency is questioned by the board, the chair [shall] may appoint one or more alienists to examine the offender and report in writing to the board, specifically addressing the issue of competency.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board shall make rules governing:

- (a) the hearing process;
- (b) alienist examination; and
- (c) parolee petitions for termination of parole.

Section 4. 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 other information as provided in Subsections (11) and (12).
- (c) "Register" means to comply with the rules of the department made under this section.

(d) "Sex offender" means any person:

(i) convicted by this state of:

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

(B) Section 76-5-301.1, kidnapping of a child;

(C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

(D) Section 76-5-401.1, sexual abuse of a minor;

(E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(F) Section 76-5-402, rape;

(G) Section 76-5-402.1, rape of a child;

(H) Section 76-5-402.2, object rape;

(I) Section 76-5-402.3, object rape of a child;

(J) a felony violation of Section 76-5-403, forcible sodomy;

(K) Section 76-5-403.1, sodomy on a child;

(L) Section 76-5-404, forcible sexual abuse;

(M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

(N) Section 76-5-405, aggravated sexual assault;

(O) Section 76-5a-3, sexual exploitation of a minor;

(P) Section 76-7-102, incest;

(Q) Section 76-9-702.5, lewdness involving a child;

(R) Section 76-10-1306, aggravated exploitation of prostitution; or

(S) attempting, soliciting, or conspiring to commit any offense listed in [~~Subsections~~]

Subsection (1)(d)(i)(A), (B), (C), (E) through (P), or (R);

(ii) convicted by any other state or the United States government of an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (1)(d)(i) and who is:

(A) a Utah resident; or

(B) not a Utah resident, but who is in the state for a period exceeding 14 consecutive days, or for an aggregate period exceeding 30 days, during any calendar year; or

(iii) who is found not guilty by reason of insanity of one or more offenses listed in Subsection (1)(d)(i).

(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), 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 and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined upon:

- (a) commitment to the correctional facility; and
- (b) release from confinement.

(7) 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 convicted by any other state or by the United States government is required to register under Subsection (1)(d)(ii) and shall register with the department within ten days after entering the state.

(9) (a) Except as provided in ~~Subsection~~ Subsections (9)(b) and (c), a sex offender shall, for the duration of the sentence and for ten years after termination of sentence, register annually and again within ten days of every change of his place of habitation.

(b) (i) A sex offender convicted of any of the offenses listed in Subsection (9)(b)(ii) shall, for the offender's lifetime, register annually and again within ten days of every change of the offender's place of habitation. This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.

(ii) Offenses referred to in Subsection (9)(b)(i) are:

(A) any offense listed in Subsection (1)(d) if the offender has previously been convicted of an offense listed in Subsection (1)(d);

- (B) Section 76-5-402.1, rape of a child;
- (C) Section 76-5-402.3, object rape of a child;
- (D) Section 76-5-403, forcible sodomy;
- (E) Section 76-5-403.1, sodomy on a child; and
- (F) Section 76-5-405, aggravated sexual assault.

(c) Notwithstanding Subsections (9)(a) and (b), a sex offender who is confined in a secure facility or in a state mental hospital is not required to register annually.

(10) An agency in the state that registers a sex offender on probation, a sex offender who has been released from confinement to parole status or termination, or a sex offender whose sentence has expired shall inform the offender of the duty to comply with the continuing registration requirements of this section during the period of registration required in Subsection (9), including:

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

(b) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

(c) notification to the out-of-state agency where the offender is living, whether or not the offender is a resident of that state.

(11) 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 residential 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.

(12) The department shall provide the following additional information when available:

(a) the crimes the sex offender was convicted of; and

(b) a description of the sex offender's primary and secondary targets.

(13) (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 (13)(b) supersedes any other provision of the law contrary to this section.

(14) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, information in Subsections (11) and (12) collected and released under this section is public information.

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

(16) 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 as required under this section.

(17) Notwithstanding Section 42-1-1, a sex offender:

(a) may not change his name:

- (i) while under the jurisdiction of the department; and
- (ii) until the registration requirements of this statute have expired; or

(b) may not change his name at any time, if registration is under Subsection (9)(b).

(18) 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.

(19) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections (11) and (12).

(20) 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.

(21) 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.

(22) 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.

(23) 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.

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

Section 5. Section **78-5-120** is amended to read:

78-5-120. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt; or

(b) a plea of guilty in the justice court that is held in abeyance.

(2) If an appeal under Subsection (1)[~~(b)~~] is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if he files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (3)(b); or

(d) an order denying a motion to withdraw a plea.

(4) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution; or

(f) an order granting a motion to withdraw a plea of guilty or no contest.

(5) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction; or

(c) the defendant enters a plea of guilty in the district court.

(6) The district court shall retain jurisdiction over the case on trial de novo.

(7) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Section 6. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.