

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **62A-7-104**, as last amended by Chapters 140 and 281, Laws of Utah 2002

33 **77-18-12**, as last amended by Chapter 228, Laws of Utah 2004

34 **77-27-21.5**, as last amended by Chapter 48, Laws of Utah 2002



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

37 Section 1. Section **62A-7-104** is amended to read:

38 **62A-7-104. Division responsibilities.**

39 (1) The division:

40 (a) shall establish and administer youth services; and

41 (b) may enter into contracts with state and local governmental entities and private
42 providers to provide the youth services.

43 (2) The division is responsible for all youth offenders committed to it by juvenile
44 courts for secure confinement or supervision and treatment in the community.

45 (3) The division shall establish and maintain all detention and secure facilities and set
46 minimum standards for those facilities.

47 (4) (a) The division shall, in accordance with Title 63, Chapter 46a, Utah
48 Administrative Rulemaking Act, promulgate written statewide rules as guidelines for
49 admission to secure detention and home detention.

50 (b) The division shall implement those rules as guidelines and provide training
51 regarding the implementation of those guidelines to law enforcement agencies, division
52 employees, juvenile court employees, and to other affected agencies and individuals upon their
53 request.

54 (5) The division shall establish and administer a continuum of community, secure, and
55 nonsecure programs for all youth offenders committed to the division.

56 (6) The division shall establish and administer Juvenile Receiving Centers, Juvenile
57 Assessment Programs, and other programs to provide temporary custody, care, risk-needs
58 assessments, evaluations, and control for nonadjudicated youth placed with the division.

59 (7) The division shall place youth offenders committed to it in the most appropriate
60 program for supervision and treatment.

61 (8) In any order committing a youth offender to the division, the juvenile court shall
62 specify whether the youth offender is being committed for secure confinement or placement in
63 a community-based program. The division shall place the youth offender in the most
64 appropriate program within the category specified by the court.

65 (9) The division shall employ staff necessary to:

66 (a) supervise and control youth offenders in secure facilities or in the community;

67 (b) supervise and coordinate treatment of youth offenders committed to the division for
68 placement in community-based programs; and

69 (c) control and supervise nonadjudicated youth placed with the division for temporary
70 services in receiving centers, youth services, and other programs established by the division.

71 (10) The division shall establish observation and assessment programs necessary to
72 serve youth offenders committed by the juvenile court for short-term observation under
73 Subsection 78-3a-118(2)(e). Whenever possible, those programs shall be conducted in settings
74 separate and distinct from secure facilities for youth offenders.

75 (11) Youth in the custody or temporary custody of the division are controlled or
76 detained in a manner consistent with public safety and rules promulgated by the division. In
77 the event of an unauthorized leave from a secure facility, detention center, community-based
78 program, receiving center, home, or any other designated placement, division employees have
79 the authority and duty to locate and apprehend the youth, or to initiate action with local law
80 enforcement agencies for assistance.

81 (12) The division shall establish and operate compensatory-service work programs
82 designed to place youth offenders in public or private service work projects for the purpose of
83 rehabilitation, education, and restitution to victims.

84 (13) The division may establish and operate compensatory-service work programs for
85 youth offenders committed to the division by the juvenile court. The compensatory-service
86 work program shall:

87 (a) provide labor to help in the operation, repair, and maintenance of public facilities,
88 parks, highways, and other programs designated by the division;

89 (b) provide educational and prevocational programs in cooperation with the State

90 Board of Education for youth offenders placed in the program; and

91 (c) provide counseling to youth offenders.

92 (14) The division shall establish minimum standards for the operation of all private
93 residential and nonresidential rehabilitation facilities which provide services to juveniles who
94 have committed a delinquent act, in this state or in any other state.

95 (15) In accordance with policies established by the board, the division shall provide
96 regular training for staff of secure facilities, detention staff, case management staff, and staff of
97 the community-based programs.

98 (16) The division is authorized to employ special function officers, as defined in
99 Section 53-13-105, to locate and apprehend absconders from division custody, transport minors
100 taken into custody pursuant to division policy, investigate cases, and carry out other duties as
101 assigned by the division. Special function officers may be employed through contract with the
102 Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired
103 by the division.

104 (17) The division shall designate employees to obtain the saliva DNA specimens
105 required under Section 53-10-403. The division shall ensure that the designated employees
106 receive appropriate training and that the specimens are obtained in accordance with accepted
107 protocol.

108 (18) The division shall register with the Department of Corrections any person who has
109 been adjudicated delinquent based on an offense listed in Subsection 77-27-21.5(1)(f)(i), and
110 who has been committed to the division for secure confinement and remains in the division's
111 custody 30 days prior to the person's 21st birthday.

112 Section 2. Section **77-18-12** is amended to read:

113 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**
114 **convictions.**

115 (1) The division shall issue a certificate of eligibility to a petitioner seeking to obtain
116 expungement for a criminal record unless prior to issuing a certificate of eligibility the division
117 finds, through records of a governmental agency, including national criminal data bases that:

118 (a) the conviction for which expungement is sought is:

119 (i) a capital felony;

120 (ii) a first degree felony;

- 121 (iii) a second degree forcible felony;
122 (iv) automobile homicide;
123 (v) a felony violation of Section 41-6-44;
124 (vi) a conviction involving a sexual act against a minor;
125 (vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)~~(f)~~(f); or
126 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection
127 77-27-21.5(1)~~(f)~~(f);

128 (b) the petitioner's record includes two or more convictions for any type of offense
129 which would be classified as a felony under Utah law, not arising out of a single criminal
130 episode, regardless of the jurisdiction in which the convictions occurred;

131 (c) the petitioner has previously obtained expungement in any jurisdiction of a crime
132 which would be classified as a felony in Utah;

133 (d) the petitioner has previously obtained expungement in any jurisdiction of two or
134 more convictions which would be classified as misdemeanors in Utah unless the convictions
135 would be classified as class B or class C misdemeanors in Utah and 15 years have passed since
136 these misdemeanor convictions;

137 (e) the petitioner was convicted in any jurisdiction, subsequent to the conviction for
138 which expungement is sought and within the time periods as provided in Subsection (2), of a
139 crime which would be classified in Utah as a felony, misdemeanor, or infraction;

140 (f) the person has a combination of three or more convictions not arising out of a single
141 criminal episode including any conviction for an offense which would be classified under Utah
142 law as a class B or class A misdemeanor or as a felony, including any misdemeanor and felony
143 convictions previously expunged, regardless of the jurisdiction in which the conviction or
144 expungement occurred; or

145 (g) a proceeding involving a crime is pending or being instituted in any jurisdiction
146 against the petitioner.

147 (2) A conviction may not be included for purposes of Subsection (1)(e), and a
148 conviction may not be considered for expungement until, after the petitioner's release from
149 incarceration, parole, or probation, whichever occurs last and all fines ordered by the court
150 have been satisfied, at least the following period of time has elapsed:

151 (a) seven years in the case of a felony;

- 152 (b) ten years in the case of:
- 153 (i) a misdemeanor conviction or the equivalent of a misdemeanor conviction as defined
- 154 in Subsection 41-6-44(1); or
- 155 (ii) a felony violation of Subsection 58-37-8(2)(g);
- 156 (c) five years in the case of a class A misdemeanor;
- 157 (d) three years in the case of any other misdemeanor or infraction under Title 76, Utah
- 158 Criminal Code; or
- 159 (e) 15 years in the case of multiple class B or class C misdemeanors.

160 (3) A petitioner who would not be eligible to receive a certificate of eligibility under
 161 Subsection (1)(d) or (f) may receive a certificate of eligibility for one additional expungement
 162 if at least 15 years have elapsed since the last of any of the following:

- 163 (a) release from incarceration, parole, or probation relating to the most recent
- 164 conviction; and
- 165 (b) any other conviction which would have prevented issuance of a certificate of
- 166 eligibility under Subsection (1)(e).

167 (4) If, after reasonable research, a disposition for an arrest on the criminal history file is
 168 unobtainable, the division may issue a special certificate giving discretion of eligibility to the
 169 court.

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

171 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**
 172 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

173 (1) As used in this section:

- 174 (a) "Department" means the Department of Corrections.
- 175 (b) "Division" means the Division of Juvenile Justice Services.

176 [~~(b)~~] (c) "Employed" or "carries on a vocation" includes employment that is full time or
 177 part time for a period of time exceeding 14 days or for an aggregate period of time exceeding
 178 30 days during any calendar year, whether financially compensated, volunteered, or for the
 179 purpose of government or educational benefit.

180 [~~(c)~~] (d) "Notification" means a person's acquisition of information from the
 181 department about a sex offender, including his place of habitation, physical description, and
 182 other information as provided in Subsections (11) and (12).

183 ~~(d)~~ (e) "Register" means to comply with the rules of the department made under this
184 section.

185 ~~(e)~~ (f) "Sex offender" means any person:

186 (i) convicted by this state of:

187 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor
188 over the Internet;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

206 (S) attempting, soliciting, or conspiring to commit any felony offense listed in

207 Subsection (1)~~(e)~~(f)(i);

208 (ii) convicted by any other state or the United States government of an offense which if
209 committed in this state would be punishable as one or more of the offenses listed in Subsection

210 (1)~~(e)~~(f)(i) and who is:

211 (A) a Utah resident; or

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

214 (iii) who is found not guilty by reason of insanity of one or more offenses listed in
215 Subsection (1)(~~e~~)(f)(i)[-]; or

216 (iv) who is adjudicated delinquent based on one or more offenses listed in Subsection
217 (1)(f)(i) and who has been committed to the division for secure confinement and remains in the
218 division's custody 30 days prior to the person's 21st birthday.

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

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

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

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

227 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(~~e~~)(f),
228 within three working days; and

229 (b) the arrest of a person suspected of any of the offenses listed in Subsection
230 (1)(~~e~~)(f), within five working days.

231 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(~~e~~) (f), the
232 convicting court shall within three working days forward a copy of the judgment and sentence
233 to the department.

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

236 (a) being placed on probation;

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

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

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

243 (e) termination of probation or parole.

244 (6) A sex offender not in the custody of the department and who is confined in a

245 correctional facility not operated by or under contract to the department shall be registered with
 246 the department by the sheriff of the county in which the offender is confined upon:

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

249 (7) A sex offender in the custody of the division shall be registered with the department
 250 by the division prior to release from custody.

251 [~~7~~] (8) A sex offender committed to a state mental hospital shall be registered with
 252 the department by the hospital upon admission and upon discharge.

253 [~~8~~] (9) A sex offender convicted by any other state or by the United States
 254 government is required to register under Subsection (1)[~~e~~](f)(ii) and shall register with the
 255 department within ten days after entering the state.

256 [~~9~~] (10) (a) Except as provided in Subsections [~~9~~] (10)(b) and (c), a sex offender
 257 shall, for the duration of the sentence and for ten years after termination of sentence or custody
 258 of the division, register annually and again within ten days of every change of his place of
 259 habitation.

260 (b) (i) A sex offender convicted as an adult of any of the offenses listed in Subsection
 261 [~~9~~] (10)(b)(ii) shall, for the offender's lifetime, register annually and again within ten days of
 262 every change of the offender's place of habitation. This registration requirement is not subject
 263 to exemptions and may not be terminated or altered during the offender's lifetime.

264 (ii) Offenses referred to in Subsection [~~9~~] (10)(b)(i) are:

265 (A) any offense listed in Subsection (1)[~~e~~](f) if at the time of the conviction the
 266 offender has previously been convicted of an offense listed in Subsection (1)[~~e~~](f) or has
 267 previously been required to register as a sex offender ~~H~~→ **for an offense committed as a**
 267a **juvenile** ←~~H~~ ;

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

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

270 (D) Section 76-5-403, forcible sodomy;

271 (E) Section 76-5-403.1, sodomy on a child; and

272 (F) Section 76-5-405, aggravated sexual assault.

273 (c) Notwithstanding Subsections [~~9~~] (10)(a) and (b), a sex offender who is confined
 274 in a secure facility or in a state mental hospital is not required to register annually.

275 [~~10~~] (11) An agency in the state that registers a sex offender on probation, a sex

276 offender who has been released from confinement to parole status or termination, or a sex
 277 offender whose sentence has expired shall inform the offender of the duty to comply with the
 278 continuing registration requirements of this section during the period of registration required in
 279 Subsection [~~(9)~~] (10), including:

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

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

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

286 [~~(11)~~] (12) A sex offender shall provide the department with the following information:

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

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

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

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

292 (e) a current photograph of the sex offender; and

293 (f) each institution of higher education in Utah at which the sex offender is employed,
 294 carries on a vocation, or is a student, and any change of enrollment or employment status of the
 295 sex offender at any institution of higher education.

296 [~~(12)~~] (13) The department shall:

297 (a) provide the following additional information when available:

298 (i) the crimes the sex offender was convicted of ~~H~~→ **or adjudicated delinquent**
 298a **for ←H** ; and

299 (ii) a description of the sex offender's primary and secondary targets; and

300 (b) ensure that the registration information collected regarding a sex offender's
 301 enrollment or employment at an institution of higher education is:

302 (i) promptly made available to any law enforcement agency that has jurisdiction where
 303 the institution is located; and

304 (ii) entered into the appropriate state records or data system.

305 [~~(13)~~] (14) (a) A sex offender who knowingly fails to register under this section is

306 guilty of a class A misdemeanor and shall be sentenced to serve a term of incarceration for not

307 fewer than 90 days and also at least one year of probation.

308 (b) Neither the court nor the Board of Pardons and Parole may release a person who
309 violates this section from serving a term of at least 90 days and of completing probation of at
310 least one year. This Subsection [~~(13)~~] (14)(b) supersedes any other provision of the law
311 contrary to this section.

312 [~~(14)~~] (15) Notwithstanding Title 63, Chapter 2, Government Records Access and
313 Management Act, information in Subsections [~~(11)~~] (12) and [~~(12)~~] (13) collected and released
314 under this section is public information.

315 [~~(15)~~] (16) (a) If a sex offender is to be temporarily sent outside a secure facility in
316 which he is confined on any assignment, including, without limitation, firefighting or disaster
317 control, the official who has custody of the offender shall, within a reasonable time prior to
318 removal from the secure facility, notify the local law enforcement agencies where the
319 assignment is to be filled.

320 (b) This Subsection [~~(15)~~] (16) does not apply to any person temporarily released under
321 guard from the institution in which he is confined.

322 [~~(16)~~] (17) Notwithstanding Sections 77-18-9 through 77-18-14 regarding
323 expungement, a person convicted of any offense listed in Subsection (1)[~~(e)~~](f) is not relieved
324 from the responsibility to register as required under this section.

325 [~~(17)~~] (18) Notwithstanding Section 42-1-1, a sex offender:

326 (a) may not change his name:

327 (i) while under the jurisdiction of the department; and

328 (ii) until the registration requirements of this statute have expired; or

329 (b) may not change his name at any time, if registration is under Subsection [~~(9)~~]
330 (10)(b).

331 [~~(18)~~] (19) The department may make rules necessary to implement this section,
332 including:

333 (a) the method for dissemination of the information; and

334 (b) instructions to the public regarding the use of the information.

335 [~~(19)~~] (20) Any information regarding the identity or location of a victim shall be
336 redacted by the department from information provided under Subsections [~~(11)~~] (12) and [~~(12)~~]
337 (13).

338 [~~(20)~~] (21) Nothing in this section shall be construed to create or impose any duty on
339 any person to request or obtain information regarding any sex offender from the department.

340 [~~(21)~~] (22) If the department chooses to post registry information on the Internet, the
341 website shall contain a disclaimer informing the public of the following:

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

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

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

348 [~~(22)~~] (23) The department shall construct the website so that users, before accessing
349 registry information, must indicate that they have read the disclaimer, understand it, and agree
350 to comply with its terms.

351 [~~(23)~~] (24) The department, its personnel, and any individual or entity acting at the
352 request or upon the direction of the department are immune from civil liability for damages for
353 good faith compliance with this section and will be presumed to have acted in good faith by
354 reporting information.

355 [~~(24)~~] (25) The department shall redact information that, if disclosed, could reasonably
356 identify a victim.

Legislative Review Note
as of 1-21-05 4:26 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0095

Sex Offender Registration Amendments

28-Jan-05

12:31 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst