

SEX OFFENDER AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies the Uniform Driver License Act, Utah Criminal Code, and the Code of Criminal Procedure by amending provisions related to sex offenders.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ provides that a driver license or identification card expires on the birth date of the applicant in the first year following the date that the driver license or identification card was issued if the person is required to register as a sex offender;
- ▶ provides that an applicant for a driver license or identification card shall indicate on the application whether the applicant is required to register as a sex offender;
- ▶ provides that if a person is currently required to register as a sex offender and the person has applied for and received a driver license or identification card:
 - the person's driver license or identification card expires on the person's next birth date beginning on July 1, 2006;
 - the person shall surrender the person's driver license or identification card on or before the person's next birth date beginning on July 1, 2006; and

- 32 • the person may apply for a driver license or identification card with a one-year
33 expiration date;
- 34 ▶ provides that if a person is convicted of a registerable sex offense after the person
35 has applied for a driver license or identification card, the person:
 - 36 • shall surrender the person's driver license or identification card on the person's
37 next birth date following conviction; and
 - 38 • may apply for a driver license or identification card with a one-year expiration
39 date;
 - 40 ▶ requires the Driver License Division to keep on its computerized records the
41 applicant's indication whether the applicant is required to register as a sex offender;
 - 42 ▶ provides that it is a class A misdemeanor if a person knowingly fails to comply with
43 the driver license or identification card indication or license surrender provisions for
44 registered sex offenders;
 - 45 ▶ prohibits the Driver License Division from granting an extension for a license
46 certificate issued with a one-year expiration date to someone required to register as
47 a sex offender;
 - 48 ▶ prohibits sex offenders from obtaining a reduction of the offender's conviction while
49 registration requirements exist;
 - 50 ▶ provides that a sex offender convicted in any other state or by the United States
51 government shall register with the Department of Corrections within ten days after
52 entering the state;
 - 53 ▶ provides that a sex offender shall register with the Department of Corrections within
54 five days of every change of the sex offender's place of habitation or vehicle or
55 education information;
 - 56 ▶ requires an agency in the state that registers certain sex offenders to notify the
57 offender of the duty to comply with the driver license or identification surrender and
58 application provisions;
 - 59 ▶ requires any person who is required to register in another state or by the United

- 60 States to register with the state if the person is in the state for ten days;
- 61 ▶ changes the annual registration period during which certain sex offenders shall
- 62 register;
- 63 ▶ extends the registration requirements for certain offenses from ten years to lifetime;
- 64 ▶ amends the penalty for failing to register for certain sex offenders;
- 65 ▶ extends notification requirements to offenders working in all educational
- 66 institutions;
- 67 ▶ repeals a provision that prohibits members of the public from publicizing the sex
- 68 offender registry information;
- 69 ▶ requires the state to maintain the registry on the Internet and index it by surname
- 70 and postal codes; and
- 71 ▶ makes technical changes.

72 **Monies Appropriated in this Bill:**

73 None

74 **Other Special Clauses:**

75 This bill takes effect on July 1, 2006.

76 **Utah Code Sections Affected:**

77 AMENDS:

78 **53-3-205**, as last amended by Chapters 20 and 34, Laws of Utah 2005

79 **53-3-214**, as last amended by Chapters 2 and 34, Laws of Utah 2005

80 **53-3-216**, as last amended by Chapters 54 and 85, Laws of Utah 2001

81 **53-3-804**, as last amended by Chapters 20 and 34, Laws of Utah 2005

82 **53-3-807**, as last amended by Chapters 20 and 34, Laws of Utah 2005

83 **76-3-402**, as last amended by Chapter 7, Laws of Utah 1991

84 **77-18-12**, as last amended by Chapter 2, Laws of Utah 2005

85 **77-27-21.5**, as last amended by Chapter 48, Laws of Utah 2002



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

88 Section 1. Section **53-3-205** is amended to read:

89 **53-3-205. Application for license or endorsement -- Fee required -- Tests --**
90 **Expiration dates of licenses and endorsements -- Information required -- Previous**
91 **licenses surrendered -- Driving record transferred from other states -- Reinstatement --**
92 **Fee required -- License agreement.**

93 (1) An application for any original license, provisional license, or endorsement shall
94 be:

- 95 (a) made upon a form furnished by the division; and
- 96 (b) accompanied by a nonrefundable fee set under Section 53-3-105.

97 (2) An application and fee for an original provisional class D license or an original
98 class D license entitle the applicant to:

99 (a) not more than three attempts to pass both the knowledge and skills tests for a class
100 D license within six months of the date of the application;

101 (b) a learner permit if needed after the knowledge test is passed; and

102 (c) an original class D license and license certificate after all tests are passed.

103 (3) An application and fee for an original class M license entitle the applicant to:

104 (a) not more than three attempts to pass both the knowledge and skills tests for a class
105 M license within six months of the date of the application;

106 (b) a learner permit if needed after the knowledge test is passed; and

107 (c) an original class M license and license certificate after all tests are passed.

108 (4) An application and fee for a motorcycle or taxicab endorsement entitle the
109 applicant to:

110 (a) not more than three attempts to pass both the knowledge and skills tests within six
111 months of the date of the application;

112 (b) a motorcycle learner permit if needed after the motorcycle knowledge test is
113 passed; and

114 (c) a motorcycle or taxicab endorsement when all tests are passed.

115 (5) An application and fees for a commercial class A, B, or C license entitle the

116 applicant to:

117 (a) not more than two attempts to pass a knowledge test and not more than two
118 attempts to pass a skills test within six months of the date of the application;

119 (b) a commercial driver instruction permit if needed after the knowledge test is passed;
120 and

121 (c) an original commercial class A, B, or C license and license certificate when all
122 applicable tests are passed.

123 (6) An application and fee for a CDL endorsement entitle the applicant to:

124 (a) not more than two attempts to pass a knowledge test and not more than two
125 attempts to pass a skills test within six months of the date of the application; and

126 (b) a CDL endorsement when all tests are passed.

127 (7) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement
128 test within the number of attempts provided in Subsection (5) or (6), each test may be taken
129 two additional times within the six months for the fee provided in Section 53-3-105.

130 (8) (a) Except as provided under Subsections (8)(f) [~~and~~], (g), and (h), an original
131 license expires on the birth date of the applicant in the fifth year following the year the license
132 certificate was issued.

133 (b) Except as provided under Subsections (8)(f) [~~and~~], (g), and (h), a renewal or an
134 extension to a license expires on the birth date of the licensee in the fifth year following the
135 expiration date of the license certificate renewed or extended.

136 (c) Except as provided under Subsections (8)(f) and (g), a duplicate license expires on
137 the same date as the last license certificate issued.

138 (d) An endorsement to a license expires on the same date as the license certificate
139 regardless of the date the endorsement was granted.

140 (e) A license and any endorsement to the license held by a person ordered to active
141 duty and stationed outside Utah in any of the armed forces of the United States, which expires
142 during the time period the person is stationed outside of the state, is valid until 90 days after the
143 person has been discharged or has left the service, unless the license is suspended, disqualified,

144 denied, or has been cancelled or revoked by the division, or the licensee updates the
145 information or photograph on the license certificate.

146 (f) An original license or a renewal to an original license obtained using proof under
147 Subsection (9)(a)(i)(E)(III) expires on the date of the expiration of the applicant's foreign visa,
148 permit, or other document granting legal presence in the United States or on the date provided
149 under this Subsection (8), whichever is sooner.

150 (g) (i) An original license or a renewal or a duplicate to an original license expires on
151 the next birth date of the applicant or licensee beginning on July 1, 2005 if:

152 (A) the license was obtained without using a Social Security number as required under
153 Subsection (9); and

154 (B) the license certificate or driving privilege card is not clearly distinguished as
155 required under Subsection 53-3-207(6).

156 (ii) A driving privilege card issued or renewed under Section 53-3-207 expires on the
157 birth date of the applicant in the first year following the year that the driving privilege card was
158 issued or renewed.

159 (iii) The expiration dates provided under Subsections (8)(g)(i) and (ii) do not apply to
160 an original license or driving privilege card or to the renewal of an original license or driving
161 privilege card with an expiration date provided under Subsection (8)(f).

162 (h) An original license or a renewal to an original license expires on the birth date of
163 the applicant in the first year following the year that the license was issued if the applicant is
164 required to register as a sex offender under Section 77-27-21.5.

165 (9) (a) In addition to the information required by Title 63, Chapter 46b, Administrative
166 Procedures Act, for requests for agency action, each applicant shall have a Utah residence
167 address and each applicant shall:

168 (i) provide the applicant's:

169 (A) full legal name;

170 (B) birth date;

171 (C) gender;

172 (D) between July 1, 2002 and July 1, 2007, race in accordance with the categories
173 established by the United States Census Bureau;

174 (E) (I) Social Security number;

175 (II) temporary identification number (ITIN) issued by the Internal Revenue Service for
176 a person who does not qualify for a Social Security number; or

177 (III) (Aa) proof that the applicant is a citizen of a country other than the United States;

178 (Bb) proof that the applicant does not qualify for a Social Security number; and

179 (Cc) proof of legal presence in the United States, as authorized under federal law; and

180 (F) Utah residence address as documented by a form acceptable under rules made by
181 the division under Section 53-3-104;

182 (ii) provide a description of the applicant;

183 (iii) state whether the applicant has previously been licensed to drive a motor vehicle
184 and, if so, when and by what state or country;

185 (iv) state whether the applicant has ever had any license suspended, cancelled, revoked,
186 disqualified, or denied in the last six years, or whether the applicant has ever had any license
187 application refused, and if so, the date of and reason for the suspension, cancellation,
188 revocation, disqualification, denial, or refusal;

189 (v) state whether the applicant intends to make an anatomical gift under Title 26,
190 Chapter 28, Uniform Anatomical Gift Act, in compliance with Subsection (16);

191 (vi) state whether the applicant is required to register as a sex offender under Section
192 77-27-21.5;

193 [~~(vi)~~] (vii) provide all other information the division requires; and

194 [~~(vii)~~] (viii) sign the application which signature may include an electronic signature as
195 defined in Section 46-4-102.

196 (b) The division shall maintain on its computerized records an applicant's:

197 (i) (A) Social Security number;

198 [~~(ii)~~] (B) temporary identification number (ITIN); or

199 [~~(iii)~~] (C) other number assigned by the division if Subsection (9)(a)(i)(E)(III)

200 applies[-]; and

201 (ii) indication whether the applicant is required to register as a sex offender under
202 Section 77-27-21.5.

203 (c) An applicant may not be denied a license for refusing to provide race information
204 required under Subsection (9)(a)(i)(D).

205 (10) The division shall require proof of every applicant's name, birthdate, and
206 birthplace by at least one of the following means:

207 (a) current license certificate;

208 (b) birth certificate;

209 (c) Selective Service registration; or

210 (d) other proof, including church records, family Bible notations, school records, or
211 other evidence considered acceptable by the division.

212 (11) When an applicant receives a license in another class, all previous license
213 certificates shall be surrendered and canceled. However, a disqualified commercial license may
214 not be canceled unless it expires before the new license certificate is issued.

215 (12) (a) When an application is received from a person previously licensed in another
216 state to drive a motor vehicle, the division shall request a copy of the driver's record from the
217 other state.

218 (b) When received, the driver's record becomes part of the driver's record in this state
219 with the same effect as though entered originally on the driver's record in this state.

220 (13) An application for reinstatement of a license after the suspension, cancellation,
221 disqualification, denial, or revocation of a previous license shall be accompanied by the
222 additional fee or fees specified in Section 53-3-105.

223 (14) A person who has an appointment with the division for testing and fails to keep
224 the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee
225 under Section 53-3-105.

226 (15) A person who applies for an original license or renewal of a license agrees that the
227 person's license is subject to any suspension or revocation authorized under this title or Title

228 41, Motor Vehicles.

229 (16) (a) The indication of intent under Subsection (9)(a)(v) shall be authenticated by
230 the licensee in accordance with division rule.

231 (b) (i) Notwithstanding Title 63, Chapter 2, Government Records Access and
232 Management Act, the division may, upon request, release to an organ procurement
233 organization, as defined in Section 26-28-2, the names and addresses of all persons who under
234 Subsection (9)(a)(v) indicate that they intend to make an anatomical gift.

235 (ii) An organ procurement organization may use released information only to:

236 (A) obtain additional information for an anatomical gift registry; and

237 (B) inform licensees of anatomical gift options, procedures, and benefits.

238 (17) The division and its employees are not liable, as a result of false or inaccurate
239 information provided under Subsection (9)(a)(v), for direct or indirect:

240 (a) loss;

241 (b) detriment; or

242 (c) injury.

243 (18) A person who knowingly fails to provide the information required under
244 Subsection (9)(a)(vi) is guilty of a class A misdemeanor.

245 Section 2. Section **53-3-214** is amended to read:

246 **53-3-214. Renewal -- Fees required -- Extension without examination.**

247 (1) (a) The holder of a valid license may renew his license and any endorsement to the
248 license by applying:

249 (i) at any time within six months before the license expires; or

250 (ii) more than six months prior to the expiration date if the applicant furnishes proof
251 that he will be absent from the state during the six-month period prior to the expiration of the
252 license.

253 (b) The application for a renewal of, extension of, or any endorsement to a license shall
254 be accompanied by a fee under Section 53-3-105.

255 (2) (a) Except as provided under Subsections (2)(b) and (3), upon application for

256 renewal of a license, provisional license, and any endorsement to a license, the division shall
257 reexamine each applicant as if for an original license and endorsement to the license, if
258 applicable.

259 (b) The division may waive any or all portions of the test designed to demonstrate the
260 applicant's ability to exercise ordinary and reasonable control driving a motor vehicle.

261 (3) (a) Except as provided under Subsection (3)(b), the division shall extend a license,
262 any endorsement to the license, a provisional license, and any endorsement to a provisional
263 license for five years without examination for licensees whose driving records for the five years
264 immediately preceding the determination of eligibility for extension show:

265 (i) no suspensions;

266 (ii) no revocations;

267 (iii) no conviction for reckless driving under Section 41-6a-528; and

268 (iv) no more than four reportable violations in the preceding five years.

269 (b) (i) After the expiration of a license, a new license certificate and any endorsement
270 to a license certificate may not be issued until the person has again passed the tests under
271 Section 53-3-206 and paid the required fee.

272 (ii) A person 65 years of age or older shall take and pass the eye examination specified
273 in Section 53-3-206.

274 (iii) An extension may not be granted to any person:

275 (A) who is identified by the division as having a medical impairment that may
276 represent a hazard to public safety;

277 (B) holding a CDL issued under Part 4 [~~of this chapter; or~~], Uniform Commercial
278 Driver License Act;

279 (C) whose original license was obtained using proof under Subsection
280 53-3-205(9)(a)(i)(E)(III)[-]; or

281 (D) whose original license was issued with an expiration date under Subsection
282 53-3-205(8)(h).

283 (c) The division shall allow extensions:

- 284 (i) by mail at the appropriate extension fee rate under Section 53-3-105;
- 285 (ii) only if the applicant qualifies under this section; and
- 286 (iii) for only one extension.

287 Section 3. Section **53-3-216** is amended to read:

288 **53-3-216. Change of address -- Duty of licensee to notify division within ten days**
289 **-- Change of name -- Proof necessary -- Method of giving notice by division.**

290 (1) If a person, after applying for or receiving a license, moves from the address named
291 in the application or in the license certificate issued to him, the person shall within ten days of
292 moving, notify the division in a manner specified by the division of his new address and the
293 number of any license certificate held by him.

294 (2) If a person requests to change the surname on the applicant's license, the division
295 shall issue a substitute license with the new name upon receiving an application and fee for a
296 duplicate license and any of the following proofs of the applicant's full legal name:

- 297 (a) an original or certified copy of the applicant's marriage certificate;
- 298 (b) a certified copy of a court order under Title 42, Chapter 1, Change of Name,
299 showing the name change;
- 300 (c) an original or certified copy of a birth certificate issued by a government agency;
- 301 (d) a certified copy of a divorce decree or annulment granted the applicant that
302 specifies the name change requested; or
- 303 (e) a certified copy of a divorce decree that does not specify the name change requested
304 together with:
 - 305 (i) an original or certified copy of the applicant's birth certificate;
 - 306 (ii) the applicant's marriage license;
 - 307 (iii) a driver license record showing use of a maiden name; or
 - 308 (iv) other documentation the division finds acceptable.

309 (3) (a) Except as provided in Subsection (3)(c), if a person has applied for and received
310 a license certificate and is currently required to register as a sex offender under Section
311 77-27-21.5:

312 (i) the person's original license or renewal to an original license expires on the next
313 birth date of the licensee beginning on July 1, 2006;

314 (ii) the person shall surrender the person's license to the division on or before the
315 licensee's next birth date beginning on July 1, 2006; and

316 (iii) the person may apply for a license certificate with an expiration date identified in
317 Subsection 53-3-205(8)(h) by:

318 (A) furnishing proper documentation to the division as provided in Section 53-3-205;
319 and

320 (B) paying the fee for a license required under Section 53-3-105.

321 (b) Except as provided in Subsection (3)(c), if a person has applied for and received a
322 license certificate and is subsequently convicted of any offense listed in Subsection
323 77-27-21.5(1)(e), the person shall surrender the license certificate to the division on the
324 person's next birth date following the conviction and may apply for a license certificate with an
325 expiration date identified in Subsection 53-3-205(8)(h) by:

326 (i) furnishing proper documentation to the division as provided in Section 53-3-205;
327 and

328 (ii) paying the fee for a license required under Section 53-3-105.

329 (c) A person who is unable to comply with the provisions of Subsection (3)(a) or (3)(b)
330 because the person is in the custody of the Department of Corrections or the Division of
331 Juvenile Justice Services, confined in a correctional facility not operated by or under contract
332 with the Department of Corrections, or committed to a state mental facility, shall comply with
333 the provisions of Subsection (3)(a) or (b) within ten days of being released from confinement.

334 ~~(3)~~ (4) (a) If the division is authorized or required to give any notice under this
335 chapter or other law regulating the operation of vehicles, the notice shall, unless otherwise
336 prescribed, be given by:

337 (i) personal delivery to the person to be notified; or

338 (ii) deposit in the United States mail with postage prepaid, addressed to the person at
339 his address as shown by the records of the division.

340 (b) The giving of notice by mail is complete upon the expiration of four days after the
341 deposit of the notice.

342 (c) Proof of the giving of notice in either manner may be made by the certificate of any
343 officer or employee of the division or affidavit of any person older than 18 years of age,
344 naming the person to whom the notice was given and specifying the time, place, and manner of
345 giving the notice.

346 [~~4~~] (5) The division may use state mailing or United States Postal Service
347 information to:

348 (a) verify an address on an application or on records of the division; and

349 (b) correct mailing addresses in the division's records.

350 [~~5~~] (6) (a) A violation of the provisions of Subsection (1) is an infraction.

351 (b) A person who knowingly fails to surrender a license certificate under Subsection
352 (3) is guilty of a class A misdemeanor.

353 Section 4. Section **53-3-804** is amended to read:

354 **53-3-804. Application for identification card -- Required information -- Release**
355 **of anatomical gift information.**

356 (1) To apply for an identification card, the applicant shall:

357 (a) be a Utah resident;

358 (b) have a Utah residence address; and

359 (c) appear in person at any license examining station.

360 (2) The applicant shall provide the following information to the division:

361 (a) true and full legal name and Utah residence address;

362 (b) date of birth as set forth in a certified copy of the applicant's birth certificate, or
363 other satisfactory evidence of birth, which shall be attached to the application;

364 (c) Social Security number;

365 (d) place of birth;

366 (e) height and weight;

367 (f) color of eyes and hair;

368 (g) between July 1, 2002 and July 1, 2007, race in accordance with the categories
369 established by the United States Census Bureau;

370 (h) signature;

371 (i) photograph; [~~and~~]

372 (j) an indication whether the applicant intends to make an anatomical gift under Title
373 26, Chapter 28, Uniform Anatomical Gift Act[-]; and

374 (k) an indication whether the applicant is required to register as a sex offender under
375 Section 77-27-21.5.

376 (3) The requirements of Section 53-3-234 apply to this section for each person, age 16
377 and older, applying for an identification card. Refusal to consent to the release of information
378 shall result in the denial of the identification card.

379 (4) An applicant may not be denied an identification card for refusing to provide race
380 information required under Subsection (2)(g).

381 (5) A person who knowingly fails to provide the information required under Subsection
382 (2)(k) is guilty of a class A misdemeanor.

383 Section 5. Section **53-3-807** is amended to read:

384 **53-3-807. Expiration -- Address and name change -- Extension for disabled.**

385 (1) The identification card expires on the birth date of the applicant in the tenth year
386 following the issuance of the identification card, except as provided under Subsection [~~(6)~~] (7).

387 (2) If a person has applied for and received an identification card and subsequently
388 moves from the address shown on the application or on the card, the person shall within ten
389 days notify the division in a manner specified by the division of his new address.

390 (3) If a person has applied for and received an identification card and subsequently
391 changes [~~his~~] the person's name under Title 42, Chapter 1, Change of Name, [~~he~~] the person:

392 (a) shall surrender the card to the division; and

393 (b) may apply for a new card in [~~his~~] the person's new name by:

394 (i) furnishing proper documentation to the division as provided in Section 53-3-804;

395 and

396 (ii) paying the fee required under Section 53-3-105.

397 (4) (a) Except as provided in Subsection (4)(c), if a person has applied for and received
398 an identification card and is currently required to register as a sex offender under Section
399 77-27-21.5:

400 (i) the person's identification card expires on the next birth date of the cardholder
401 beginning on July 1, 2006;

402 (ii) the person shall surrender the person's identification card to the division on or
403 before the cardholder's next birth date beginning on July 1, 2006; and

404 (iii) the person may apply for an identification card with an expiration date identified in
405 Subsection (8)(b) by:

406 (A) furnishing proper documentation to the division as provided in Section 53-3-804;
407 and

408 (B) paying the fee for an identification card required under Section 53-3-105.

409 (b) Except as provided in Subsection (4)(c), if a person has applied for and received an
410 identification card and is subsequently convicted of any offense listed in Subsection
411 77-27-21.5(1)(e), the person shall surrender the card to the division on the person's next birth
412 date following the conviction and may apply for a new card with an expiration date identified
413 in Subsection (8)(b) by:

414 (i) furnishing proper documentation to the division as provided in Section 53-3-804;
415 and

416 (ii) paying the fee required under Section 53-3-105.

417 (c) A person who is unable to comply with the provisions of Subsection (4)(a) or (4)(b)
418 because the person is in the custody of the Department of Corrections or Division of Juvenile
419 Justice Services, confined in a correctional facility not operated by or under contract with the
420 Department of Corrections, or committed to a state mental facility, shall comply with the
421 provisions of Subsection (4)(a) or (b) within ten days of being released from confinement.

422 ~~[(4)]~~ (5) A person older than 21 years of age with a disability, as defined under the
423 Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on

424 an identification card for ten years if the person with a disability or an agent of the person with
425 a disability:

426 (a) requests that the division send the application form to obtain the extension or
427 requests an application form in person at the division's offices;

428 (b) completes the application;

429 (c) certifies that the extension is for a person 21 years of age or older with a disability;

430 and

431 (d) returns the application to the division together with the identification card fee
432 required under Section 53-3-105.

433 [~~(5)~~] (6) (a) An identification card may only be extended once.

434 (b) After an extension an application for an identification card must be applied for in
435 person at the division's offices.

436 [~~(6)~~] (7) An identification card issued to a person 65 years of age or older does not
437 expire, but continues in effect until the death of that person.

438 [~~(7)~~] (8) Notwithstanding the provisions of this section[;]:

439 (a) an identification card that was obtained without using a Social Security number as
440 required under Subsection 53-3-804(2) expires on July 1, 2005[;]; and

441 (b) an identification card expires on the birth date of the applicant in the first year
442 following the year that the identification card was issued if the applicant is required to register
443 as a sex offender under Section 77-27-21.5.

444 (9) A person who knowingly fails to surrender an identification card under Subsection
445 (4) is guilty of a class A misdemeanor.

446 Section 6. Section **76-3-402** is amended to read:

447 **76-3-402. Conviction of lower degree of offense.**

448 (1) If the court, having regard to the nature and circumstances of the offense of which
449 the defendant was found guilty and to the history and character of the defendant, concludes it
450 would be unduly harsh to record the conviction as being for that degree of offense established
451 by statute and to sentence the defendant to an alternative normally applicable to that offense,

452 the court may unless otherwise specifically provided by law enter a judgment of conviction for
453 the next lower degree of offense and impose sentence accordingly.

454 (2) If a conviction is for a third degree felony the conviction is considered to be for a
455 class A misdemeanor if:

456 (a) the judge designates the sentence to be for a class A misdemeanor and the sentence
457 imposed is within the limits provided by law for a class A misdemeanor; or

458 (b) (i) the imposition of the sentence is stayed and the defendant is placed on probation,
459 whether committed to jail as a condition of probation or not;

460 (ii) the defendant is subsequently discharged without violating his probation; and

461 (iii) the judge upon motion and notice to the prosecuting attorney, and a hearing if
462 requested by either party or the court, finds it is in the interest of justice that the conviction be
463 considered to be for a class A misdemeanor.

464 (3) An offense may be reduced only one degree under this section unless the prosecutor
465 specifically agrees in writing or on the court record that the offense may be reduced two
466 degrees. In no case may an offense be reduced under this section by more than two degrees.

467 (4) This section may not be construed to preclude any person from obtaining or being
468 granted an expungement of his record as provided by law.

469 (5) Notwithstanding the provisions of this section:

470 (a) a person required to register as a sex offender under Section 77-27-21.5 is not
471 eligible to obtain a reduction of the conviction that requires the person to register as a sex
472 offender:

473 (i) while under the jurisdiction of the Department of Corrections; or

474 (ii) until the registration requirements under Section 77-27-21.5 have expired; and

475 (b) a person required to register as a sex offender for the person's lifetime under
476 Subsection 77-27-21.5(9)(c) may not be granted a reduction of the conviction for the offense or
477 offenses that require the person to register as a sex offender.

478 Section 7. Section **77-18-12** is amended to read:

479 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**

480 **convictions.**

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

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

485 (i) a capital felony;

486 (ii) a first degree felony;

487 (iii) a second degree forcible felony;

488 (iv) automobile homicide;

489 (v) a felony violation of Section 41-6a-502;

490 (vi) a conviction involving a sexual act against a minor;

491 (vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)~~(f)~~(e); or

492 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection
493 77-27-21.5(1)~~(f)~~(e);

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

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

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

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

506 (f) the person has a combination of three or more convictions not arising out of a single
507 criminal episode including any conviction for an offense which would be classified under Utah

508 law as a class B or class A misdemeanor or as a felony, including any misdemeanor and felony
509 convictions previously expunged, regardless of the jurisdiction in which the conviction or
510 expungement occurred; or

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

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

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

518 (b) ten years in the case of:

519 (i) a misdemeanor conviction or the equivalent of a misdemeanor conviction as defined
520 in Subsection 41-6a-501(2); or

521 (ii) a felony violation of Subsection 58-37-8(2)(g);

522 (c) five years in the case of a class A misdemeanor;

523 (d) three years in the case of any other misdemeanor or infraction under Title 76, Utah
524 Criminal Code; or

525 (e) 15 years in the case of multiple class B or class C misdemeanors.

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

529 (a) release from incarceration, parole, or probation relating to the most recent
530 conviction; and

531 (b) any other conviction which would have prevented issuance of a certificate of
532 eligibility under Subsection (1)(e).

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

536 Section 8. Section **77-27-21.5** is amended to read:

537 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**
538 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

539 (1) As used in this section:

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

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

545 (c) "Notification" means a person's acquisition of information from the department
546 about a sex offender, including his place of habitation, physical description, and other
547 information as provided in Subsections (11) and (12).

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

550 (e) "Sex offender" means any person:

551 (i) convicted by this state of:

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

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

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

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

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

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

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

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

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

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

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

- 564 (L) Section 76-5-404, forcible sexual abuse;
- 565 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 566 (N) Section 76-5-405, aggravated sexual assault;
- 567 (O) Section 76-5a-3, sexual exploitation of a minor;
- 568 (P) Section 76-7-102, incest;
- 569 (Q) Section 76-9-702.5, lewdness involving a child;
- 570 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
- 571 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
- 572 Subsection (1)(e)(i);
- 573 (ii) ~~[convicted by any other state or the United States government of an offense which~~
- 574 ~~if committed in this state would be punishable as one or more of the offenses listed in]~~ who has
- 575 been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in
- 576 another state or by the United States government that is substantially equivalent to the offenses
- 577 listed in Subsection (1)(e)(i) and who is:
- 578 (A) a Utah resident; or
- 579 (B) not a Utah resident, but who is in the state for ~~[a period exceeding 14 consecutive~~
- 580 ~~days, or for an aggregate period exceeding 30 days, during any calendar year; or]~~ ten days,
- 581 regardless of whether or not the offender intends to permanently reside in this state;
- 582 (iii) who is required to register as a sex offender in any other state or United States
- 583 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
- 584 the offender intends to permanently reside in this state;
- 585 (iv) who is a nonresident regularly employed, working, or a student in this state and
- 586 was convicted of one or more offenses listed in Subsection (1)(e)(i), or any substantially
- 587 equivalent offense in another state or by the United States government, and as a result of the
- 588 conviction, is required to register in the person's state of residence; or
- 589 ~~[(iii)]~~ (v) who is found not guilty by reason of insanity in this state, any other state, or
- 590 by the United States government of one or more offenses listed in Subsection (1)(e)(i).
- 591 (2) The department, to assist in investigating sex-related crimes and in apprehending

592 offenders, shall:

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

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

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

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

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

603 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(e), the
604 convicting court shall within three working days forward a copy of the judgment and sentence
605 to the department.

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

608 (a) being placed on probation;

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

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

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

615 (e) termination of probation or parole.

616 (6) A sex offender not in the custody of the department and who is confined in a
617 correctional facility not operated by or under contract to the department shall be registered with
618 the department by the sheriff of the county in which the offender is confined upon:

619 (a) commitment to the correctional facility; and

620 (b) release from confinement.

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

623 (8) A sex offender convicted by any other state or by the United States government is
624 required to register under Subsection (1)(e)(ii) and shall register with the department within ten
625 days ~~after~~ of entering the state, regardless of the length of stay.

626 (9) (a) Except as provided in Subsections (9)(b) ~~and~~, (c), and (d), a sex offender shall,
627 for the duration of the sentence and for ten years after termination of sentence, register annually
628 during the month of the offender's birth and again within ~~ten~~ five days of every change of his
629 place of habitation, vehicle information, or educational information required to be submitted
630 under Subsection (11).

631 (b) Except as provided Subsections (9)(c) and (d), a sex offender who is convicted of
632 an offense listed in Subsection (1)(e)(i) by another state shall register for the time period
633 required by the state where the offender was convicted if the state's registration period for the
634 offense that the offender was convicted of is in excess of the ten years from completion of the
635 sentence registration period that is required under Subsection (9)(a).

636 ~~(b)~~ (c) (i) A sex offender convicted as an adult of any of the offenses listed in
637 Subsection (9)~~(b)~~(c)(ii) shall, for the offender's lifetime, register annually during the month of
638 the offender's birth and again within ~~ten~~ five days of every change of the offender's place of
639 habitation, vehicle information, or educational information required to be submitted under
640 Subsection (11). This registration requirement is not subject to exemptions and may not be
641 terminated or altered during the offender's lifetime.

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

643 (A) any offense listed in Subsection (1)(e) if, at the time of the conviction, the offender
644 has previously been convicted of an offense listed in Subsection (1)(e);

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

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

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

- 648 (E) Section 76-5-403.1, sodomy on a child; [~~and~~]
- 649 (F) Section 76-5-405, aggravated sexual assault[-];
- 650 (G) Section 76-5-301.1, child kidnapping;
- 651 (H) Section 76-5-404.1, sexual abuse of a child;
- 652 (I) Subsection 76-5-404.1(4), aggravated sexual abuse of a child;
- 653 (J) Section 76-5a-3, sexual exploitation of a minor;
- 654 (K) Section 76-7-102, incest;
- 655 (L) Section 76-5-402, rape; or
- 656 (M) Section 76-5-402.2, object rape.

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

659 (e) A sex offender that is required to register annually under this Subsection (9) shall
660 surrender the sex offender's license certificate or identification card as required under
661 Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification
662 card as provided under Section 53-3-205 or 53-3-804.

663 (10) An agency in the state that registers a sex offender on probation, a sex offender
664 who has been released from confinement to parole status or termination, or a sex offender
665 whose sentence has expired shall inform the offender of the duty to comply with:

666 (a) the continuing registration requirements of this section during the period of
667 registration required in Subsection (9), including:

668 [~~(a)~~] (i) notification to the state agencies in the states where the registrant presently
669 resides and plans to reside when moving across state lines;

670 [~~(b)~~] (ii) verification of address at least every 60 days pursuant to a parole agreement
671 for lifetime parolees; and

672 [~~(c)~~] (iii) notification to the out-of-state agency where the offender is living, whether or
673 not the offender is a resident of that state[-]; and

674 (b) the driver license certificate or identification card surrender requirement under
675 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or

676 53-3-804.

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

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

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

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

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

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

684 (f) each educational institution [~~of higher education~~] in Utah at which the sex offender
685 is employed, carries on a vocation, or is a student, and any change of enrollment or
686 employment status of the sex offender at any educational institution [~~of higher education~~].

687 (12) The department shall:

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

689 (i) the crimes the sex offender was convicted of; and

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

691 (b) ensure that the registration information collected regarding a sex offender's
692 enrollment or employment at an educational institution [~~of higher education~~] is:

693 (i) (A) promptly made available to any law enforcement agency that has jurisdiction
694 where the institution is located~~[-and] if the educational institution is an institution of higher~~
695 education; or

696 (B) promptly made available to the district superintendent of the school district where
697 the offender is enrolled if the educational institution is an institution of primary education; and

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

699 (13) (a) A sex offender who knowingly fails to register under this section is guilty of:

700 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not
701 less than 90 days and also at least one year of probation if:

702 (A) the sex offender is required to register for a felony conviction of an offense listed
703 in Subsection (1)(e)(i); or

704 (B) the sex offender is required to register for the offender's lifetime under Subsection
705 (9)(c); or

706 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
707 not fewer than 90 days and also at least one year of probation if the sex offender is required to
708 register for a misdemeanor conviction of an offense listed in Subsection (1)(e)(i).

709 (b) Neither the court nor the Board of Pardons and Parole may release a person who
710 violates this section from serving [a] the term [of at least 90 days and of completing probation
711 of at least one year] required under Subsection (13)(a). This Subsection (13)(b) supersedes any
712 other provision of the law contrary to this section.

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

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

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

723 (16) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a
724 person convicted of any offense listed in Subsection (1)(e) is not relieved from the
725 responsibility to register as required under this section.

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

727 (a) may not change his name:

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

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

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

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

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

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

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

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

738 (21) ~~[If the]~~ The department ~~[chooses to]~~ shall post registry information on the Internet,
739 and the website shall contain a disclaimer informing the public of the following:

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

742 (b) members of the public are not allowed to ~~[publicize the information or]~~ use [it] the
743 information to harass or threaten sex offenders or members of their families; and

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

746 (22) The website shall be indexed by both the surname of the offender and by postal
747 codes.

748 ~~[(22)]~~ (23) The department shall construct the website so that users, before accessing
749 registry information, must indicate that they have read the disclaimer, understand it, and agree
750 to comply with its terms.

751 ~~[(23)]~~ (24) The department, its personnel, and any individual or entity acting at the
752 request or upon the direction of the department are immune from civil liability for damages for
753 good faith compliance with this section and will be presumed to have acted in good faith by
754 reporting information.

755 ~~[(24)]~~ (25) The department shall redact information that, if disclosed, could reasonably
756 identify a victim.

757 **Section 9. Effective date.**

758 This bill takes effect on July 1, 2006.