

1                                   **SEX OFFENDER REGISTRATION**

2   **AMENDMENTS**

3   2006 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: M. Susan Lawrence**

6   Senate Sponsor: Lyle W. Hillyard

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8   **LONG TITLE**

9   **General Description:**

10           This bill requires the registration of a sex offender who is committed to the Division of  
11   Juvenile Justice Services for secure confinement and who remains in the division's  
12   custody 30 days prior to the offender's 21st birthday.

13   **Highlighted Provisions:**

14           This bill:

15           ▶ modifies the responsibilities of the Division of Juvenile Justice Services to require  
16   that the division register a sex offender with the Department of Corrections prior to  
17   the offender's release from custody;

18           ▶ amends sex offender registration law to include those who have been adjudicated  
19   delinquent for one of the specified offenses and remain in the custody of the  
20   division 30 days prior to their 21st birthday;

21           ▶ requires lifetime registration if an offender who is convicted as an adult has been  
22   previously convicted or required to register as a sex offender; and

23           ▶ requires the Division of Juvenile Justice Services to provide the following  
24   information when available:

- 25           • crimes for which the offender was adjudicated delinquent; and  
26           • a description of the sex offender's primary and secondary targets.

27   **Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **62A-7-104**, as last amended by Chapter 13, Laws of Utah 2005

34 **77-18-12**, as last amended by Chapter 2, Laws of Utah 2005

35 **77-27-21.5**, as last amended by Chapter 48, Laws of Utah 2002



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

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

39 **62A-7-104. Division responsibilities.**

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

42 (2) The division shall:

43 (a) establish and administer a continuum of community, secure, and nonsecure  
44 programs for all youth offenders committed to the division;

45 (b) establish and maintain all detention and secure facilities and set minimum standards  
46 for those facilities;

47 (c) establish and operate prevention and early intervention youth services programs for  
48 nonadjudicated youth placed with the division; and

49 (d) establish observation and assessment programs necessary to serve youth offenders  
50 committed by the juvenile court for short-term observation under Subsection 78-3a-118(2)(e),  
51 and whenever possible, conduct the programs in settings separate and distinct from secure  
52 facilities for youth offenders.

53 (3) The division shall place youth offenders committed to it in the most appropriate  
54 program for supervision and treatment.

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

- 59 (5) The division shall employ staff necessary to:
- 60 (a) supervise and control youth offenders in secure facilities or in the community;
- 61 (b) supervise and coordinate treatment of youth offenders committed to the division for
- 62 placement in community-based programs; and
- 63 (c) control and supervise nonadjudicated youth placed with the division for temporary
- 64 services in receiving centers, youth services, and other programs established by the division.
- 65 (6) Youth in the custody or temporary custody of the division are controlled or detained
- 66 in a manner consistent with public safety and rules promulgated by the division. In the event of
- 67 an unauthorized leave from a secure facility, detention center, community-based program,
- 68 receiving center, home, or any other designated placement, division employees have the
- 69 authority and duty to locate and apprehend the youth, or to initiate action with local law
- 70 enforcement agencies for assistance.
- 71 (7) The division shall establish and operate compensatory-service work programs for
- 72 youth offenders committed to the division by the juvenile court. The compensatory-service
- 73 work program shall:
- 74 (a) provide labor to help in the operation, repair, and maintenance of public facilities,
- 75 parks, highways, and other programs designated by the division;
- 76 (b) provide educational and prevocational programs in cooperation with the State
- 77 Board of Education for youth offenders placed in the program; and
- 78 (c) provide counseling to youth offenders.
- 79 (8) The division shall establish minimum standards for the operation of all private
- 80 residential and nonresidential rehabilitation facilities which provide services to juveniles who
- 81 have committed a delinquent act, in this state or in any other state.
- 82 (9) In accordance with policies established by the board, the division shall provide
- 83 regular training for staff of secure facilities, detention staff, case management staff, and staff of
- 84 the community-based programs.
- 85 (10) (a) The division is authorized to employ special function officers, as defined in
- 86 Section 53-13-105, to locate and apprehend minors who have absconded from division
- 87 custody, transport minors taken into custody pursuant to division policy, investigate cases, and
- 88 carry out other duties as assigned by the division.
- 89 (b) Special function officers may be employed through contract with the Department of

90 Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

91 (11) The division shall designate employees to obtain the saliva DNA specimens  
92 required under Section 53-10-403. The division shall ensure that the designated employees  
93 receive appropriate training and that the specimens are obtained in accordance with accepted  
94 protocol.

95 (12) The division shall register with the Department of Corrections any person who:

96 (a) has been adjudicated delinquent based on an offense listed in Subsection

97 77-27-21.5(1)(f)(i);

98 (b) has been committed to the division for secure confinement; and

99 (c) remains in the division's custody 30 days prior to the person's 21st birthday.

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

101 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**

102 **convictions.**

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

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

107 (i) a capital felony;

108 (ii) a first degree felony;

109 (iii) a second degree forcible felony;

110 (iv) automobile homicide;

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

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

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

114 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection

115 77-27-21.5(1)~~(f)~~(f);

116 (b) the petitioner's record includes two or more convictions for any type of offense

117 which would be classified as a felony under Utah law, not arising out of a single criminal

118 episode, regardless of the jurisdiction in which the convictions occurred;

119 (c) the petitioner has previously obtained expungement in any jurisdiction of a crime

120 which would be classified as a felony in Utah;

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

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

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

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

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

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

140 (b) ten years in the case of:

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

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

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

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

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

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

151 (a) release from incarceration, parole, or probation relating to the most recent

152 conviction; and

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

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

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

159 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**  
160 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

161 (1) As used in this section:

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

163 (b) "Division" means the Division of Juvenile Justice Services.

164 ~~(b)~~ (c) "Employed" or "carries on a vocation" includes employment that is full time or  
165 part time for a period of time exceeding 14 days or for an aggregate period of time exceeding  
166 30 days during any calendar year, whether financially compensated, volunteered, or for the  
167 purpose of government or educational benefit.

168 ~~(c)~~ (d) "Notification" means a person's acquisition of information from the  
169 department about a sex offender, including his place of habitation, physical description, and  
170 other information as provided in Subsections ~~(11) and~~ (12) and (13).

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

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

174 (i) convicted by this state of:

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

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

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

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

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

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

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

- 183 (H) Section 76-5-402.2, object rape;
- 184 (I) Section 76-5-402.3, object rape of a child;
- 185 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 186 (K) Section 76-5-403.1, sodomy on a child;
- 187 (L) Section 76-5-404, forcible sexual abuse;
- 188 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 189 (N) Section 76-5-405, aggravated sexual assault;
- 190 (O) Section 76-5a-3, sexual exploitation of a minor;
- 191 (P) Section 76-7-102, incest;
- 192 (Q) Section 76-9-702.5, lewdness involving a child;
- 193 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
- 194 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
- 195 Subsection (1)~~(e)~~(f)(i);
- 196 (ii) convicted by any other state or the United States government of an offense which if
- 197 committed in this state would be punishable as one or more of the offenses listed in Subsection
- 198 (1)~~(e)~~(f)(i) and who is:
- 199 (A) a Utah resident; or
- 200 (B) not a Utah resident, but who is in the state for a period exceeding 14 consecutive
- 201 days, or for an aggregate period exceeding 30 days, during any calendar year; ~~or~~
- 202 (iii) who is found not guilty by reason of insanity of one or more offenses listed in
- 203 Subsection (1)~~(e)~~(f)(i)~~[-]; or~~
- 204 (iv) who is adjudicated delinquent based on one or more offenses listed in Subsection
- 205 (1)(f)(i) and who has been committed to the division for secure confinement and remains in the
- 206 division's custody 30 days prior to the person's 21st birthday.
- 207 (2) The department, to assist in investigating sex-related crimes and in apprehending
- 208 offenders, shall:
- 209 (a) develop and operate a system to collect, analyze, maintain, and disseminate
- 210 information on sex offenders and sex offenses; and
- 211 (b) make information collected and developed under this section available to the
- 212 public.
- 213 (3) Any law enforcement agency shall, in the manner prescribed by the department,

214 inform the department of:

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

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

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

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

224 (a) being placed on probation;

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

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

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

231 (e) termination of probation or parole.

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

235 (a) commitment to the correctional facility; and

236 (b) release from confinement.

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

239 ~~(7)~~ (8) A sex offender committed to a state mental hospital shall be registered with  
240 the department by the hospital upon admission and upon discharge.

241 ~~(8)~~ (9) A sex offender convicted by any other state or by the United States  
242 government is required to register under Subsection (1)~~(e)~~(f)(ii) and shall register with the  
243 department within ten days after entering the state.

244 ~~(9)~~ (10) (a) Except as provided in Subsections ~~(9)~~ (10)(b) and (c), a sex offender



245 shall, for the duration of the sentence and for ten years after termination of sentence or custody  
246 of the division, register annually and again within ten days of every change of his place of  
247 habitation.

248 (b) (i) A sex offender convicted as an adult of any of the offenses listed in Subsection  
249 [~~(9)~~] (10)(b)(i) shall, for the offender's lifetime, register annually and again within ten days of  
250 every change of the offender's place of habitation. This registration requirement is not subject  
251 to exemptions and may not be terminated or altered during the offender's lifetime.

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

253 (A) any offense listed in Subsection (1)[~~(e)~~](f) if at the time of the conviction the  
254 offender has previously been convicted of an offense listed in Subsection (1)[~~(e)~~](f) or has  
255 previously been required to register as a sex offender for an offense committed as a juvenile;

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

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

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

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

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

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

263 [~~(10)~~] (11) An agency in the state that registers a sex offender on probation, a sex  
264 offender who has been released from confinement to parole status or termination, or a sex  
265 offender whose sentence has expired shall inform the offender of the duty to comply with the  
266 continuing registration requirements of this section during the period of registration required in  
267 Subsection [~~(9)~~] (10), including:

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

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

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

274 [~~(11)~~] (12) A sex offender shall provide the department with the following information:

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

- 276 (b) the sex offender's name and residential address;
- 277 (c) a physical description, including the sex offender's age, height, weight, eye and hair
- 278 color;
- 279 (d) the type of vehicle or vehicles the sex offender drives;
- 280 (e) a current photograph of the sex offender; and
- 281 (f) each institution of higher education in Utah at which the sex offender is employed,
- 282 carries on a vocation, or is a student, and any change of enrollment or employment status of the
- 283 sex offender at any institution of higher education.

284 [~~12~~] (13) The department shall:

- 285 (a) provide the following additional information when available:
- 286 (i) the crimes the sex offender was convicted of or adjudicated delinquent for; and
- 287 (ii) a description of the sex offender's primary and secondary targets; and
- 288 (b) ensure that the registration information collected regarding a sex offender's
- 289 enrollment or employment at an institution of higher education is:
  - 290 (i) promptly made available to any law enforcement agency that has jurisdiction where
  - 291 the institution is located; and
  - 292 (ii) entered into the appropriate state records or data system.

293 [~~13~~] (14) (a) A sex offender who knowingly fails to register under this section is

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

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

296 (b) Neither the court nor the Board of Pardons and Parole may release a person who

297 violates this section from serving a term of at least 90 days and of completing probation of at

298 least one year. This Subsection [~~13~~] (14)(b) supersedes any other provision of the law

299 contrary to this section.

300 [~~14~~] (15) Notwithstanding Title 63, Chapter 2, Government Records Access and

301 Management Act, information in Subsections [~~11~~] (12) and [~~12~~] (13) collected and released

302 under this section is public information.

303 [~~15~~] (16) (a) If a sex offender is to be temporarily sent outside a secure facility in

304 which he is confined on any assignment, including, without limitation, firefighting or disaster

305 control, the official who has custody of the offender shall, within a reasonable time prior to

306 removal from the secure facility, notify the local law enforcement agencies where the

307 assignment is to be filled.

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

310 [~~(16)~~] (17) Notwithstanding Sections 77-18-9 through 77-18-14 regarding  
311 expungement, a person convicted of any offense listed in Subsection (1)[~~(e)~~](f) is not relieved  
312 from the responsibility to register as required under this section.

313 [~~(17)~~] (18) Notwithstanding Section 42-1-1, a sex offender:

314 (a) may not change his name:

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

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

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

319 [~~(18)~~] (19) The department may make rules necessary to implement this section,  
320 including:

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

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

323 [~~(19)~~] (20) Any information regarding the identity or location of a victim shall be  
324 redacted by the department from information provided under Subsections [~~(11)~~] (12) and [~~(12)~~]  
325 (13).

326 [~~(20)~~] (21) Nothing in this section shall be construed to create or impose any duty on  
327 any person to request or obtain information regarding any sex offender from the department.

328 [~~(21)~~] (22) If the department chooses to post registry information on the Internet, the  
329 website shall contain a disclaimer informing the public of the following:

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

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

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

336 [~~(22)~~] (23) The department shall construct the website so that users, before accessing  
337 registry information, must indicate that they have read the disclaimer, understand it, and agree

338 to comply with its terms.

339            [~~(23)~~] (24) The department, its personnel, and any individual or entity acting at the  
340 request or upon the direction of the department are immune from civil liability for damages for  
341 good faith compliance with this section and will be presumed to have acted in good faith by  
342 reporting information.

343            [~~(24)~~] (25) The department shall redact information that, if disclosed, could reasonably  
344 identify a victim.

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**Legislative Review Note**  
**as of 9-26-05 8:13 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**