

Representative Brad L. Dee proposes the following substitute bill:

SEX OFFENDER AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: Sheldon L. Killpack

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
 - the person may apply for a driver license or identification card with a one-year



26 expiration date;

27 ▶ provides that if a person is convicted of a registerable sex offense after the person

28 has applied for a driver license or identification card, the person:

29 • shall surrender the person's driver license or identification card on the person's

30 next birth date following conviction; and

31 • may apply for a driver license or identification card with a one-year expiration

32 date;

33 ▶ requires the Driver License Division to keep on its computerized records the

34 applicant's indication whether the applicant is required to register as a sex offender;

35 ▶ provides that it is a class A misdemeanor if a person knowingly fails to comply with

36 the driver license or identification card indication or license surrender provisions for

37 registered sex offenders;

38 ▶ prohibits the Driver License Division from granting an extension for a license

39 certificate issued with a one-year expiration date to someone required to register as

40 a sex offender;

41 ▶ prohibits sex offenders from obtaining a reduction of the offender's conviction while

42 registration requirements exist;

43 ▶ provides that a sex offender convicted in any other state or by the United States

44 government shall register with the Department of Corrections within three days after

45 entering the state;

46 ▶ provides that a sex offender shall register with the Department of Corrections within

47 three days of every change of the sex offender's place of habitation or vehicle or

48 education information;

49 ▶ requires an agency in the state that registers certain sex offenders to notify the

50 offender of the duty to comply with the driver license or identification surrender and

51 application provisions;

52 ▶ requires any person who is required to register in another state or by the United

53 States to register with the state if the person is in the state for more than three days;

54 ▶ changes the annual registration period during which certain sex offenders shall

55 register;

56 ▶ extends the registration requirements for certain offenses from ten years to lifetime;

- 57 ▶ amends the penalty for failing to register for certain sex offenders;
- 58 ▶ extends notification requirements to offenders working in all educational
- 59 institutions;
- 60 ▶ repeals a provision that prohibits members of the public from publicizing the sex
- 61 offender registry information;
- 62 ▶ requires the state to maintain the registry on the Internet and index it by surname
- 63 and postal codes; and
- 64 ▶ makes technical changes.

65 **Monies Appropriated in this Bill:**

66 None

67 **Other Special Clauses:**

68 This bill takes effect on July 1, 2006.

69 **Utah Code Sections Affected:**

70 AMENDS:

- 71 **53-3-205**, as last amended by Chapters 20 and 34, Laws of Utah 2005
- 72 **53-3-214**, as last amended by Chapters 2 and 34, Laws of Utah 2005
- 73 **53-3-216**, as last amended by Chapters 54 and 85, Laws of Utah 2001
- 74 **53-3-804**, as last amended by Chapters 20 and 34, Laws of Utah 2005
- 75 **53-3-807**, as last amended by Chapters 20 and 34, Laws of Utah 2005
- 76 **76-3-402**, as last amended by Chapter 7, Laws of Utah 1991
- 77 **77-18-12**, as last amended by Chapter 2, Laws of Utah 2005
- 78 **77-27-21.5**, as last amended by Chapter 48, Laws of Utah 2002



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

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

82 **53-3-205. Application for license or endorsement -- Fee required -- Tests --**
 83 **Expiration dates of licenses and endorsements -- Information required -- Previous**
 84 **licenses surrendered -- Driving record transferred from other states -- Reinstatement --**
 85 **Fee required -- License agreement.**

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

- 88 (a) made upon a form furnished by the division; and
89 (b) accompanied by a nonrefundable fee set under Section 53-3-105.
- 90 (2) An application and fee for an original provisional class D license or an original
91 class D license entitle the applicant to:
- 92 (a) not more than three attempts to pass both the knowledge and skills tests for a class
93 D license within six months of the date of the application;
- 94 (b) a learner permit if needed after the knowledge test is passed; and
95 (c) an original class D license and license certificate after all tests are passed.
- 96 (3) An application and fee for an original class M license entitle the applicant to:
- 97 (a) not more than three attempts to pass both the knowledge and skills tests for a class
98 M license within six months of the date of the application;
- 99 (b) a learner permit if needed after the knowledge test is passed; and
100 (c) an original class M license and license certificate after all tests are passed.
- 101 (4) An application and fee for a motorcycle or taxicab endorsement entitle the
102 applicant to:
- 103 (a) not more than three attempts to pass both the knowledge and skills tests within six
104 months of the date of the application;
- 105 (b) a motorcycle learner permit if needed after the motorcycle knowledge test is
106 passed; and
107 (c) a motorcycle or taxicab endorsement when all tests are passed.
- 108 (5) An application and fees for a commercial class A, B, or C license entitle the
109 applicant to:
- 110 (a) not more than two attempts to pass a knowledge test and not more than two
111 attempts to pass a skills test within six months of the date of the application;
- 112 (b) a commercial driver instruction permit if needed after the knowledge test is passed;
113 and
114 (c) an original commercial class A, B, or C license and license certificate when all
115 applicable tests are passed.
- 116 (6) An application and fee for a CDL endorsement entitle the 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; and

- 119 (b) a CDL endorsement when all tests are passed.
- 120 (7) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement
121 test within the number of attempts provided in Subsection (5) or (6), each test may be taken
122 two additional times within the six months for the fee provided in Section 53-3-105.
- 123 (8) (a) Except as provided under Subsections (8)(f) [~~and~~], (g), and (h), an original
124 license expires on the birth date of the applicant in the fifth year following the year the license
125 certificate was issued.
- 126 (b) Except as provided under Subsections (8)(f) [~~and~~], (g), and (h) a renewal or an
127 extension to a license expires on the birth date of the licensee in the fifth year following the
128 expiration date of the license certificate renewed or extended.
- 129 (c) Except as provided under Subsections (8)(f) and (g), a duplicate license expires on
130 the same date as the last license certificate issued.
- 131 (d) An endorsement to a license expires on the same date as the license certificate
132 regardless of the date the endorsement was granted.
- 133 (e) A license and any endorsement to the license held by a person ordered to active
134 duty and stationed outside Utah in any of the armed forces of the United States, which expires
135 during the time period the person is stationed outside of the state, is valid until 90 days after the
136 person has been discharged or has left the service, unless the license is suspended, disqualified,
137 denied, or has been cancelled or revoked by the division, or the licensee updates the
138 information or photograph on the license certificate.
- 139 (f) An original license or a renewal to an original license obtained using proof under
140 Subsection (9)(a)(i)(E)(III) expires on the date of the expiration of the applicant's foreign visa,
141 permit, or other document granting legal presence in the United States or on the date provided
142 under this Subsection (8), whichever is sooner.
- 143 (g) (i) An original license or a renewal or a duplicate to an original license expires on
144 the next birth date of the applicant or licensee beginning on July 1, 2005 if:
- 145 (A) the license was obtained without using a Social Security number as required under
146 Subsection (9); and
- 147 (B) the license certificate or driving privilege card is not clearly distinguished as
148 required under Subsection 53-3-207(6).
- 149 (ii) A driving privilege card issued or renewed under Section 53-3-207 expires on the

150 birth date of the applicant in the first year following the year that the driving privilege card was
151 issued or renewed.

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

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

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

161 (i) provide the applicant's:

162 (A) full legal name;

163 (B) birth date;

164 (C) gender;

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

167 (E) (I) Social Security number;

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

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

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

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

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

175 (ii) provide a description of the applicant;

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

178 (iv) state whether the applicant has ever had any license suspended, cancelled, revoked,
179 disqualified, or denied in the last six years, or whether the applicant has ever had any license
180 application refused, and if so, the date of and reason for the suspension, cancellation,

181 revocation, disqualification, denial, or refusal;

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

184 (vi) state whether the applicant is required to register as a sex offender under Section
185 77-27-21.5;

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

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

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

190 (i) (A) Social Security number;

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

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

193 applies[-]; and

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

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

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

200 (a) current license certificate;

201 (b) birth certificate;

202 (c) Selective Service registration; or

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

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

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

211 (b) When received, the driver's record becomes part of the driver's record in this state

212 with the same effect as though entered originally on the driver's record in this state.

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

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

219 (15) A person who applies for an original license or renewal of a license agrees that the
220 person's license is subject to any suspension or revocation authorized under this title or Title
221 41, Motor Vehicles.

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

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

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

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

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

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

233 (a) loss;

234 (b) detriment; or

235 (c) injury.

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

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

239 **53-3-214. Renewal -- Fees required -- Extension without examination.**

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

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

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

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

248 (2) (a) Except as provided under Subsections (2)(b) and (3), upon application for
249 renewal of a license, provisional license, and any endorsement to a license, the division shall
250 reexamine each applicant as if for an original license and endorsement to the license, if
251 applicable.

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

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

258 (i) no suspensions;

259 (ii) no revocations;

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

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

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

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

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

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

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

272 (C) whose original license was obtained using proof under Subsection
273 53-3-205(9)(a)(i)(E)(III)~~[-]; or~~

274 (D) whose original license was issued with an expiration date under Subsection
275 53-3-205(8)(h).

276 (c) The division shall allow extensions:

277 (i) by mail at the appropriate extension fee rate under Section 53-3-105;

278 (ii) only if the applicant qualifies under this section; and

279 (iii) for only one extension.

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

281 **53-3-216. Change of address -- Duty of licensee to notify division within ten days**

282 **-- Change of name -- Proof necessary -- Method of giving notice by division.**

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

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

290 (a) an original or certified copy of the applicant's marriage certificate;

291 (b) a certified copy of a court order under Title 42, Chapter 1, Change of Name,
292 showing the name change;

293 (c) an original or certified copy of a birth certificate issued by a government agency;

294 (d) a certified copy of a divorce decree or annulment granted the applicant that
295 specifies the name change requested; or

296 (e) a certified copy of a divorce decree that does not specify the name change requested
297 together with:

298 (i) an original or certified copy of the applicant's birth certificate;

299 (ii) the applicant's marriage license;

300 (iii) a driver license record showing use of a maiden name; or

301 (iv) other documentation the division finds acceptable.

302 (3) (a) Except as provided in Subsection (3)(c), if a person has applied for and received
303 a license certificate and is currently required to register as a sex offender under Section
304 77-27-21.5:

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

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

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

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

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

314 (b) Except as provided in Subsection (3)(c), if a person has applied for and received a
315 license certificate and is subsequently convicted of any offense listed in Subsection
316 77-27-21.5(1)(e), the person shall surrender the license certificate to the division on the
317 person's next birth date following the conviction and may apply for a license certificate with an
318 expiration date identified in Subsection 53-3-205(8)(h) by:

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

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

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

327 ~~[(3)]~~ (4) (a) If the division is authorized or required to give any notice under this
328 chapter or other law regulating the operation of vehicles, the notice shall, unless otherwise
329 prescribed, be given by:

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

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

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

335 (c) Proof of the giving of notice in either manner may be made by the certificate of any

336 officer or employee of the division or affidavit of any person older than 18 years of age,
337 naming the person to whom the notice was given and specifying the time, place, and manner of
338 giving the notice.

339 ~~[(4)]~~ (5) The division may use state mailing or United States Postal Service
340 information to:

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

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

343 ~~[(5)]~~ (6) (a) A violation of the provisions of Subsection (1) is an infraction.

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

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

347 **53-3-804. Application for identification card -- Required information -- Release**
348 **of anatomical gift information.**

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

350 (a) be a Utah resident;

351 (b) have a Utah residence address; and

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

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

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

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

357 (c) Social Security number;

358 (d) place of birth;

359 (e) height and weight;

360 (f) color of eyes and hair;

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

363 (h) signature;

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

365 (j) an indication whether the applicant intends to make an anatomical gift under Title
366 26, Chapter 28, Uniform Anatomical Gift Act[-]; and

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

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

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

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

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

377 **53-3-807. Expiration -- Address and name change -- Extension for disabled.**

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

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

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

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

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

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

388 and

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

390 (4) (a) Except as provided in Subsection (4)(c), if a person has applied for and received
391 an identification card and is currently required to register as a sex offender under Section
392 77-27-21.5:

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

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

397 (iii) the person may apply for an identification card with an expiration date identified in

398 Subsection (8)(b) by:

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

400 and

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

402 (b) Except as provided in Subsection (4)(c), if a person has applied for and received an

403 identification card and is subsequently convicted of any offense listed in Subsection

404 77-27-21.5(1)(e), the person shall surrender the card to the division on the person's next birth

405 date following the conviction and may apply for a new card with an expiration date identified

406 in Subsection (8)(b) by:

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

408 and

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

410 (c) A person who is unable to comply with the provisions of Subsection (4)(a) or (4)(b)

411 because the person is in the custody of the Department of Corrections or Division of Juvenile

412 Justice Services, confined in a correctional facility not operated by or under contract with the

413 Department of Corrections, or committed to a state mental facility, shall comply with the

414 provisions of Subsection (4)(a) or (b) within ten days of being released from confinement.

415 ~~[(4)]~~ (5) A person older than 21 years of age with a disability, as defined under the
416 Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on
417 an identification card for ten years if the person with a disability or an agent of the person with
418 a disability:

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

421 (b) completes the application;

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

423 and

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

426 ~~[(5)]~~ (6) (a) An identification card may only be extended once.

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

429 ~~[(6)]~~ (7) An identification card issued to a person 65 years of age or older does not
430 expire, but continues in effect until the death of that person.

431 ~~[(7)]~~ (8) Notwithstanding the provisions of this section~~[-];~~:

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

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

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

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

440 **76-3-402. Conviction of lower degree of offense.**

441 (1) If the court, having regard to the nature and circumstances of the offense of which
442 the defendant was found guilty and to the history and character of the defendant, concludes it
443 would be unduly harsh to record the conviction as being for that degree of offense established
444 by statute and to sentence the defendant to an alternative normally applicable to that offense,
445 the court may unless otherwise specifically provided by law enter a judgment of conviction for
446 the next lower degree of offense and impose sentence accordingly.

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

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

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

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

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

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

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

462 (5) Notwithstanding the provisions of this section:

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

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

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

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

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

472 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**
473 **convictions.**

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

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

478 (i) a capital felony;

479 (ii) a first degree felony;

480 (iii) a second degree forcible felony;

481 (iv) automobile homicide;

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

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

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

485 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in Subsection
486 77-27-21.5(1)~~(f)~~(e);

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

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

491 which would be classified as a felony in Utah;

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

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

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

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

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

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

511 (b) ten years in the case of:

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

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

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

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

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

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

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

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

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

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

530 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**
531 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

532 (1) As used in this section:

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

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

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

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

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

544 (i) convicted by this state of:

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

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

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

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

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

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

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

- 553 (H) Section 76-5-402.2, object rape;
- 554 (I) Section 76-5-402.3, object rape of a child;
- 555 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 556 (K) Section 76-5-403.1, sodomy on a child;
- 557 (L) Section 76-5-404, forcible sexual abuse;
- 558 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 559 (N) Section 76-5-405, aggravated sexual assault;
- 560 (O) Section 76-5a-3, sexual exploitation of a minor;
- 561 (P) Section 76-7-102, incest;
- 562 (Q) Section 76-9-702.5, lewdness involving a child;
- 563 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
- 564 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
- 565 Subsection (1)(e)(i);
- 566 (ii) ~~[convicted by any other state or the United States government of an offense which~~
- 567 ~~if committed in this state would be punishable as one or more of the offenses listed in]~~ who has
- 568 been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in
- 569 another state or by the United States Government that is substantially equivalent to the offenses
- 570 listed in Subsection (1)(e)(i) and who is:
- 571 (A) a Utah resident; or
- 572 (B) not a Utah resident, but who is in the state for ~~[a period exceeding 14 consecutive~~
- 573 ~~days, or for an aggregate period exceeding 30 days, during any calendar year; or]~~ three days,
- 574 regardless of whether or not the offender intends to permanently reside in this state;
- 575 (iii) who is required to register as a sex offender in any other state or United States
- 576 territory, is not a Utah resident, but who is in the state for three days, regardless of whether or
- 577 not the offender intends to permanently reside in this state;
- 578 (iv) who is a nonresident regularly employed, working, or a student in this state and
- 579 was convicted of one or more offenses listed in Subsection (1)(e)(i), or any substantially
- 580 equivalent offense in another state or by the United States Government, and as a result of the
- 581 conviction, is required to register in the person's state of residence; or
- 582 ~~[(iii)]~~ (v) who is found not guilty by reason of insanity in this state, any other state, or
- 583 by the United States Government of one or more offenses listed in Subsection (1)(e)(i).

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

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

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

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

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

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

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

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

601 (a) being placed on probation;

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

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

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

608 (e) termination of probation or parole.

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

612 (a) commitment to the correctional facility; and

613 (b) release from confinement.

614 (7) A sex offender committed to a state mental hospital shall be registered with the

615 department by the hospital upon admission and upon discharge.

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

619 (9) (a) Except as provided in Subsections (9)(b) ~~[and]~~, (c), and (d), a sex offender shall,
620 for the duration of the sentence and for ten years after termination of sentence, register annually
621 during the month of the offender's birth and again within ~~[ten]~~ three days of every change of his
622 place of habitation, vehicle information, or educational information required to be submitted
623 under Subsection (11).

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

629 ~~[(b)]~~ (c) (i) A sex offender convicted as an adult of any of the offenses listed in
630 Subsection (9)~~[(b)]~~(c)(ii) shall, for the offender's lifetime, register annually during the month of
631 the offender's birth and again within ~~[ten]~~ three days of every change of the offender's place of
632 habitation, vehicle information, or educational information required to be submitted under
633 Subsection (11). This registration requirement is not subject to exemptions and may not be
634 terminated or altered during the offender's lifetime.

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

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

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

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

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

641 (E) Section 76-5-403.1, sodomy on a child; ~~[and]~~

642 (F) Section 76-5-405, aggravated sexual assault[-];

643 (G) Section 76-5-301.1, child kidnapping;

644 (H) Section 76-5-404.1, sexual abuse of a child;

645 (I) Subsection 76-5-404.1(4), aggravated sexual abuse of a child;

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

647 (K) Section 76-7-102, incest;

648 (L) Section 76-5-402, rape; or

649 (M) Section 76-5-402.2, object rape.

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

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

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

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

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

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

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

667 (b) the driver license certificate or identification card surrender requirement under
668 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
669 53-3-804.

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

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

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

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

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

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

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

680 (12) The department shall:

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

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

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

684 (b) ensure that the registration information collected regarding a sex offender's

685 enrollment or employment at an educational institution [~~of higher education~~] is:

686 (i) (A) promptly made available to any law enforcement agency that has jurisdiction
687 where the institution is located[; and] if the educational institution is an institution of higher
688 education; or

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

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

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

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

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

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

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

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

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

708 section is public information.

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

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

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

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

720 (a) may not change his name:

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

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

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

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

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

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

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

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

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

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

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

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

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

741 [~~(22)~~] (23) The department shall construct the website so that users, before accessing
742 registry information, must indicate that they have read the disclaimer, understand it, and agree
743 to comply with its terms.

744 [~~(23)~~] (24) The department, its personnel, and any individual or entity acting at the
745 request or upon the direction of the department are immune from civil liability for damages for
746 good faith compliance with this section and will be presumed to have acted in good faith by
747 reporting information.

748 [~~(24)~~] (25) The department shall redact information that, if disclosed, could reasonably
749 identify a victim.

750 Section 9. **Effective date.**

751 This bill takes effect on July 1, 2006.

State Impact

It is estimated that provisions of this bill will increase revenues to the state by \$134,000 annually. The Department of Public Safety will require an ongoing appropriation from the Transportation Fund Department of Public Safety Restricted Account of \$93,700 and one additional FTE beginning FY 2007. The Department of Corrections will require a General Fund appropriation of \$55,100 in FY 2007 and ongoing funds of \$86,100 beginning in FY 2008 to implement provisions of this bill. County Sheriffs may also be impacted by provisions of the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$55,100	\$86,100	\$0	\$0
Transportation Fund Restr	\$93,700	\$93,700	\$134,000	\$134,000
TOTAL	\$148,800	\$179,800	\$134,000	\$134,000

Individual and Business Impact

Sex offenders will have to renew their licenses annually and pay the \$20 fee.
