

Senator Darin G. Peterson proposes the following substitute bill:

**INTERNET SEXUAL CONTENT - PROTECTION
OF MINORS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Darin G. Peterson

LONG TITLE

General Description:

This bill modifies the Criminal Code by amending the penalties for enticing a minor over the Internet in order to commit a sexual offense. This bill also modifies Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances.

Highlighted Provisions:

This bill:

- ▶ amends the penalty for enticing a minor to commit a first degree felony sexual offense, so that the enticement offense is a ~~§~~ **second degree felony for the first violation, and for any subsequent violation is a** ~~←~~ ~~§~~ first degree felony with a specified penalty;

- ▶ includes enticing a minor over the Internet when subsequent contact is by electronic or written means other than the use of a computer;

- ▶ provides that if a defendant commits the offense of enticing a minor to commit any felony sexual offense, and the defendant has previously committed a sexual offense or kidnapping against a minor, the court may not shorten the prison sentence;

- ▶ repeals the following sections:

- repeals the section establishing an adult content registry and references to the registry; and



- 26 • repeals the section requiring that an Internet services provider must provide to
- 27 consumers the service of blocking material on the adult content registry;
- 28 ▶ provides a definition of "negligent" regarding material harmful to minors;
- 29 ▶ describes the circumstances under which an Internet service provider or a hosting
- 30 company is not guilty of criminal conduct involving distributing pornographic
- 31 material, inducing acceptance of pornographic material, or dealing in material
- 32 harmful to a minor;
- 33 ▶ increases the minimum mandatory fine for dealing in material harmful to a minor;
- 34 ▶ provides that a felony or class A offense of enticing a minor over the Internet is a
- 35 prior offense regarding sex offender lifetime registration;
- 36 ▶ clarifies the standard applicable to conduct of Internet service providers regarding
- 37 filtering of material harmful to minors from negligently or recklessly to a standard
- 38 of knowing or intentional conduct; and
- 39 ▶ amends the provisions regarding charging the consumer for software that blocks
- 40 material harmful to minors.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill provides an immediate effective date.

45 **Utah Code Sections Affected:**

46 AMENDS:

47 **76-4-401**, as last amended by Chapter 164, Laws of Utah 2003

48 **76-10-1201**, as last amended by Chapter 9, Laws of Utah 2001

49 **76-10-1204**, as last amended by Chapter 281, Laws of Utah 2005

50 **76-10-1205**, as last amended by Chapter 281, Laws of Utah 2005

51 **76-10-1206**, as last amended by Chapter 281, Laws of Utah 2005

52 **76-10-1230**, as enacted by Chapter 281, Laws of Utah 2005

53 **76-10-1231**, as enacted by Chapter 281, Laws of Utah 2005

54 **77-27-21.5**, as last amended by Chapters 189, 269 and 334, Laws of Utah 2006

55 REPEALS:

56 **67-5-19**, as enacted by Chapter 281, Laws of Utah 2005

57 76-10-1232, as enacted by Chapter 281, Laws of Utah 2005

58

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

60 Section 1. Section 76-4-401 is amended to read:

61 **76-4-401. Enticing a minor over the Internet -- Elements -- Penalties.**

62 (1) (a) A person commits enticement of a minor over the Internet when the person
63 knowingly uses a computer to solicit, seduce, lure, or entice, or attempts to use a computer to
64 solicit, seduce, lure, or entice a minor or a person the defendant believes to be a minor to
65 engage in any sexual activity which is a violation of state criminal law.

66 (b) A person commits enticement of a minor over the Internet when the person
67 knowingly uses a computer to initiate contact with a minor or a person the defendant believes
68 to be a minor and subsequently, by any electronic or written means, solicits, seduces, lures, or
69 entices, or attempts to solicit, seduce, lure, or entice the minor or a person the defendant
70 believes to be the minor to engage in any sexual activity which is a violation of state criminal
71 law.

72 (2) It is not a defense to the crime of enticing a minor under Subsection (1), or an
73 attempt to commit this offense, that a law enforcement officer or an undercover operative who
74 is working with a law enforcement agency was involved in the detection or investigation of the
75 offense.

76 (3) An enticement of a minor under Subsection (1) with the intent to commit:

77 (a) a first degree felony is a ~~§~~→ :

77a (i) [f] **second degree felony** [j] upon the first conviction for violation of this Subsection (3)(a);

77b **and**

77c (ii) ~~←§~~ first degree felony punishable by

78 imprisonment for an indeterminate term of not fewer than three years and which may be for

79 life ~~§~~→, upon a second or any subsequent conviction for a violation of this Subsection (3)(a) ~~←§~~ ;

80 (b) a second degree felony is a third degree felony;

81 (c) a third degree felony is a class A misdemeanor;

82 (d) a class A misdemeanor is a class B misdemeanor; and

83 (e) a class B misdemeanor is a class C misdemeanor.

84 (4) (a) When a person who commits a felony violation of this section has been

85 previously convicted of an offense under Subsection (4)(b), the court may not in any way

86 shorten the prison sentence, and the court may not:

87 (i) grant probation;

- 88 (ii) suspend the execution or imposition of the sentence;
- 89 (iii) enter a judgment for a lower category of offense; or
- 90 (iv) order hospitalization.
- 91 (b) The sections referred to in Subsection (4)(a) are:
- 92 (i) Section 76-4-401, enticing a minor over the Internet;
- 93 (ii) Section 76-5-301.1, child kidnapping;
- 94 (iii) Section 76-5-402, rape;
- 95 (iv) Section 76-5-402.1, rape of a child;
- 96 (v) Section 76-5-402.2, object rape;
- 97 (vi) Section 76-5-402.3, object rape of a child;
- 98 (vii) Subsection 76-5-403(2), forcible sodomy;
- 99 (viii) Section 76-5-403.1, sodomy on a child;
- 100 (ix) Section 76-5-404, forcible sexual abuse;
- 101 (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;
- 102 (xi) Section 76-5-405, aggravated sexual assault;
- 103 (xii) any offense in any other state or federal jurisdiction which constitutes or would
- 104 constitute a crime in Subsections (4)(b)(i) through (xi); or
- 105 (xiii) the attempt to commit any of the offenses in Subsections (4)(b)(i) through (xii).

106 Section 2. Section **76-10-1201** is amended to read:

107 **76-10-1201. Definitions.**

108 For the purpose of this part:

- 109 (1) "Contemporary community standards" means those current standards in the
- 110 vicinage where an offense alleged under this act has occurred, is occurring, or will occur.
- 111 (2) "Distribute" means to transfer possession of materials whether with or without
- 112 consideration.
- 113 (3) "Exhibit" means to show.
- 114 (4) "Harmful to minors" means that quality of any description or representation, in
- 115 whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when
- 116 it:
 - 117 (a) taken as a whole, appeals to the prurient interest in sex ~~[of]~~ with minors;
 - 118 (b) is patently offensive to prevailing standards in the adult community as a whole with

119 respect to what is suitable material for minors; and

120 (c) taken as a whole, does not have serious value for minors. Serious value includes
121 only serious literary, artistic, political, or scientific value for minors.

122 (5) "Knowingly" means an awareness, whether actual or constructive, of the character
123 of material or of a performance. A person has constructive knowledge if a reasonable
124 inspection or observation under the circumstances would have disclosed the nature of the
125 subject matter and if a failure to inspect or observe is either for the purpose of avoiding the
126 disclosure or is criminally negligent as described in Section 76-2-103.

127 (6) "Material" means anything printed or written or any picture, drawing, photograph,
128 motion picture, or pictorial representation, or any statue or other figure, or any recording or
129 transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or
130 may be used as a means of communication. Material includes undeveloped photographs,
131 molds, printing plates, and other latent representational objects.

132 (7) "Minor" means any person less than ~~[eighteen]~~ 18 years of age.

133 (8) "Negligently" means simple negligence, the failure to exercise that degree of care
134 that a reasonable and prudent person would exercise under like or similar circumstances.

135 ~~[(8)]~~ (9) "Nudity" means the showing of the human male or female genitals, pubic area,
136 or buttocks, with less than an opaque covering, or the showing of a female breast with less than
137 an opaque covering, or any portion thereof below the top of the nipple, or the depiction of
138 covered male genitals in a discernibly turgid state.

139 ~~[(9)]~~ (10) "Performance" means any physical human bodily activity, whether engaged
140 in alone or with other persons, including but not limited to singing, speaking, dancing, acting,
141 simulating, or pantomiming.

142 ~~[(10)]~~ (11) "Public place" includes a place to which admission is gained by payment of
143 a membership or admission fee, however designated, notwithstanding its being designated a
144 private club or by words of like import.

145 ~~[(11)]~~ (12) "Sado-masochistic abuse" means flagellation or torture by or upon a person
146 who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the
147 condition of being fettered, bound, or otherwise physically restrained on the part of one so
148 clothed.

149 ~~[(12)]~~ (13) "Sexual conduct" means acts of masturbation, sexual intercourse, or any

150 touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a
151 female, breast, whether alone or between members of the same or opposite sex or between
152 humans and animals in an act of apparent or actual sexual stimulation or gratification.

153 ~~[(13)]~~ (14) "Sexual excitement" means a condition of human male or female genitals
154 when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging
155 in or witnessing sexual conduct or nudity.

156 Section 3. Section **76-10-1204** is amended to read:

157 **76-10-1204. Distributing pornographic material.**

158 (1) A person is guilty of distributing pornographic material when he knowingly:

159 (a) sends or brings any pornographic material into the state with intent to distribute or
160 exhibit it to others;

161 (b) prepares, publishes, prints, or possesses any pornographic material with intent to
162 distribute or exhibit it to others;

163 (c) distributes or offers to distribute, exhibits or offers to exhibit any pornographic
164 material to others;

165 (d) writes, creates, or solicits the publication or advertising of pornographic material;

166 (e) promotes the distribution or exhibition of material he represents to be pornographic;

167 or

168 (f) presents or directs a pornographic performance in any public place or any place
169 exposed to public view or participates in that portion of the performance which makes it
170 pornographic.

171 (2) Each distributing of pornographic material as defined in Subsection (1) is a separate
172 offense.

173 (3) It is a separate offense under this section for:

174 (a) each day's exhibition of any pornographic motion picture film; and

175 (b) each day in which any pornographic publication is displayed or exhibited in a
176 public place with intent to distribute or exhibit it to others.

177 (4) (a) An offense under this section is a third degree felony punishable by:

178 (i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article
179 exhibited up to the maximum allowed by law; and

180 (ii) incarceration, without suspension of sentence in any way, for a term of not less than

181 30 days.

182 (b) This Subsection (4) supersedes Section 77-18-1.

183 [~~(5) A service provider, as defined in Section 76-10-1230, complies with this section if~~
184 ~~it complies with Sections 76-10-1231 and 76-10-1232.]~~

185 (5) (a) This section does not apply to an Internet service provider, as defined in Section
186 76-10-1230, if:

187 (i) the distribution of pornographic material by the Internet service provider occurs
188 only incidentally through the Internet service provider's function of:

189 (A) transmitting or routing data from one person to another person; or

190 (B) providing a connection between one person and another person;

191 (ii) the Internet Service provider does not intentionally aid or abet in the distribution of
192 the pornographic material; and

193 (iii) the Internet service provider does not knowingly receive funds from or through a
194 person who distributes the pornographic material in exchange for permitting the person to
195 distribute the pornographic material.

196 (b) This section does not apply to a hosting company, as defined in Section
197 76-10-1230, if:

198 (i) the distribution of pornographic material by the hosting company occurs only
199 incidentally through the hosting company's function of providing data storage space or data
200 caching to a person;

201 (ii) the hosting company does not intentionally ~~§~~→ [participate] engage ←~~§~~ , aid, or abet in
201a the

202 distribution of the pornographic material; and

203 (iii) the hosting company does not knowingly receive funds from or through a person
204 who distributes the pornographic material in exchange for permitting the person to distribute,
205 store, or cache the pornographic material.

206 Section 4. Section **76-10-1205** is amended to read:

207 **76-10-1205. Inducing acceptance of pornographic material.**

208 (1) A person is guilty of inducing acceptance of pornographic material when he
209 knowingly:

210 (a) requires or demands as a condition to a sale, allocation, consignment, or delivery
211 for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that

212 the purchaser or consignee receive any pornographic material or material reasonably believed
 213 by the purchaser or consignee to be pornographic; or

214 (b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any
 215 penalty, financial or otherwise, because of the failure or refusal to accept pornographic material
 216 or material reasonably believed by the purchaser or consignee to be pornographic.

217 (2) (a) An offense under this section is a third degree felony punishable by:

218 (i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article
 219 exhibited up to the maximum allowed by law; and

220 (ii) incarceration, without suspension of sentence in any way, for a term of not less than
 221 30 days.

222 (b) This Subsection (2) supersedes Section 77-18-1.

223 ~~[(3) A service provider, as defined in Section 76-10-1230, complies with this section if~~
 224 ~~it complies with Sections 76-10-1231 and 76-10-1232.]~~

225 (3) (a) This section does not apply to an Internet service provider, as defined in Section
 226 76-10-1230, if:

227 (i) the distribution of pornographic material by the Internet service provider occurs
 228 only incidentally through the Internet service provider's function of:

229 (A) transmitting or routing data from one person to another person; or

230 (B) providing a connection between one person and another person;

231 (ii) the Internet Service provider does not intentionally aid or abet in the distribution of
 232 the pornographic material; and

233 (iii) the Internet service provider does not knowingly receive funds from or through a
 234 person who distributes the pornographic material in exchange for permitting the person to
 235 distribute the pornographic material.

236 (b) This section does not apply to a hosting company, as defined in Section
 237 76-10-1230, if:

238 (i) the distribution of pornographic material by the hosting company occurs only
 239 incidentally through the hosting company's function of providing data storage space or data
 240 caching to a person;

241 (ii) the hosting company does not intentionally ~~§~~→ [participate] engage ←~~§~~ , aid, or abet in
 241a the
 242 distribution of the pornographic material; and

243 (iii) the hosting company does not knowingly receive funds from or through a person
244 who distributes the pornographic material in exchange for permitting the person to distribute,
245 store, or cache the pornographic material.

246 Section 5. Section **76-10-1206** is amended to read:

247 **76-10-1206. Dealing in material harmful to a minor.**

248 (1) A person is guilty of dealing in material harmful to minors when, knowing that a
249 person is a minor, or having negligently [~~or recklessly~~] failed to determine the proper age of a
250 minor, [~~he~~] the person:

251 (a) intentionally distributes or offers to distribute, exhibits or offers to exhibit to a
252 minor any material harmful to minors;

253 (b) intentionally produces, presents, or directs any performance before a minor, that is
254 harmful to minors; or

255 (c) intentionally participates in any performance before a minor, that is harmful to
256 minors.

257 (2) (a) Each separate offense under this section is a third degree felony punishable by:

258 (i) a minimum mandatory fine of not less than [~~\$300~~] \$1,000 plus \$10 for each article
259 exhibited up to the maximum allowed by law; and

260 (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

261 (b) This section supersedes Section 77-18-1.

262 (3) (a) If a defendant has already been convicted once under this section, each separate
263 further offense is a second degree felony punishable by:

264 (i) a minimum mandatory fine of not less than \$5,000 plus \$10 for each article
265 exhibited up to the maximum allowed by law; and

266 (ii) incarceration, without suspension of sentence, for a term of not less than one year.

267 (b) This section supersedes Section 77-18-1.

268 (c) (i) This section does not apply to an Internet service provider, as defined in Section
269 76-10-1230, if:

270 (A) the distribution of pornographic material by the Internet service provider occurs
271 only incidentally through the Internet service provider's function of:

272 (I) transmitting or routing data from one person to another person; or

273 (II) providing a connection between one person and another person;

274 (B) the Internet Service provider does not intentionally aid or abet in the distribution of
 275 the pornographic material; and

276 (C) the Internet service provider does not knowingly receive funds from or through a
 277 person who distributes the pornographic material in exchange for permitting the person to
 278 distribute the pornographic material.

279 (ii) This section does not apply to a hosting company, as defined in Section
 280 76-10-1230, if:

281 (A) the distribution of pornographic material by the hosting company occurs only
 282 incidentally through the hosting company's function of providing data storage space or data
 283 caching to a person;

284 (B) the hosting company does not intentionally ~~§~~→ [participate] engage ←~~§~~ , aid, or abet
 284a in the
 285 distribution of the pornographic material; and

286 (C) the hosting company does not knowingly receive funds from or through a person
 287 who distributes the pornographic material in exchange for permitting the person to distribute,
 288 store, or cache the pornographic material.

289 (4) (a) A service provider, as defined in Section 76-10-1230, [~~complies with~~] is not
 290 negligent under this section if it complies with [~~Sections~~] Section 76-10-1231 [~~and~~
 291 ~~76-10-1232~~].

292 (b) A content provider, as defined in Section 76-10-1230, [~~complies with~~] is not
 293 negligent under this section if it complies with Section 76-10-1233.

294 Section 6. Section **76-10-1230** is amended to read:

295 **76-10-1230. Definitions.**

296 As used in Sections 76-10-1231[, ~~76-10-1232,~~] and 76-10-1233:

297 (1) "Access restricted" means that a content provider limits access to material harmful
 298 to minors by:

299 (a) properly rating content;

300 (b) providing an age verification mechanism designed to prevent a minor's access to
 301 material harmful to minors, including requiring use of a credit card, adult access code, or
 302 digital certificate verifying age; or

303 (c) any other reasonable measures feasible under available technology.

304 [~~(2) "Adult content registry" means the adult content registry created by Section~~

305 ~~67-5-19:]~~

306 ~~[(3)]~~ (2) "Consumer" means a natural person residing in this state who subscribes to a
307 service provided by a service provider for personal or residential use.

308 ~~[(4)]~~ (3) "Content provider" means a person ~~[that]~~ domiciled in Utah or that generates
309 or hosts content in Utah, and that creates, collects, acquires, or organizes electronic data for
310 electronic delivery to a consumer with the intent of making a profit.

311 ~~[(5)]~~ (4) (a) "Hosting company" means a person that provides services or facilities for
312 storing or distributing content over the Internet without editorial or creative alteration of the
313 content.

314 (b) A hosting company may have policies concerning acceptable use without becoming
315 a content provider under Subsection ~~[(4)]~~ (3).

316 ~~[(6)]~~ (5) (a) "Internet service provider" means a person engaged in the business of
317 providing a computer ~~[and]~~ communications facility in Utah, with the intent of making a profit,
318 through which a consumer may obtain access to the Internet.

319 (b) "Internet service provider" does not include a common carrier if it provides only
320 telecommunications service.

321 ~~[(7)]~~ (6) "Properly rated" means content using a labeling system to label material
322 harmful to minors provided by the content provider in a way that:

323 (a) accurately appraises a consumer of the presence of material harmful to minors; and

324 (b) allows the consumer the ability to control access to material harmful to minors
325 based on the material's rating by use of reasonably priced commercially available software,
326 including software in the public domain.

327 ~~[(8)]~~ (7) (a) Except as provided in Subsection ~~[(8)]~~ (7)(b), "service provider" means:

328 (i) an Internet service provider; or

329 (ii) a person who otherwise provides an Internet access service to a consumer in Utah
330 with the intent of making a profit.

331 (b) "Service provider" does not include a person who does not terminate a service in
332 this state, but merely transmits data through:

333 (i) a wire;

334 (ii) a cable; or

335 (iii) an antenna.

336 (c) "Service provider," notwithstanding Subsection ~~[(8)]~~ (7)(b), includes a person who
337 meets the requirements of Subsection ~~[(8)]~~ (7)(a) and leases or rents a wire or cable for the
338 transmission of data.

339 Section 7. Section **76-10-1231** is amended to read:

340 **76-10-1231. Data service providers -- Internet content harmful to minors.**

341 (1) (a) Upon request by a consumer, a service provider shall filter content to prevent
342 the transmission of material harmful to minors to the consumer.

343 (b) A service provider complies with Subsection (1)(a) if it uses a generally accepted
344 and commercially reasonable method of filtering.

345 (2) At the time of a consumer's subscription to a service provider's service, or at the
346 time this section takes effect if the consumer subscribes to the service provider's service at the
347 time this section takes effect, the service provider shall notify the consumer in a conspicuous
348 manner that the consumer may request to have material harmful to minors blocked under
349 Subsection (1).

350 (3) (a) A service provider may comply with Subsection (1) by:

351 (i) providing in-network filtering to prevent receipt of material harmful to minors,
352 provided that the filtering does not affect or interfere with access to Internet content for
353 consumers who do not request filtering under Subsection (1); or

354 (ii) providing software, or engaging a third party to provide software, for
355 contemporaneous installation on the consumer's computer that blocks, in an easy-to-enable and
356 commercially reasonable manner, receipt of material harmful to minors.

357 ~~[(b) (i) Except as provided in Subsection (3)(b)(ii), a service provider may not charge a~~
358 ~~consumer for blocking material or providing software under this section, except that a service~~
359 ~~provider may increase the cost to all subscribers to the service provider's services to recover the~~
360 ~~cost of complying with this section.]~~

361 ~~[(ii) A service provider with fewer than 7,500 subscribers may charge a consumer for~~
362 ~~providing software under Subsection (3)(a)(ii) if the charge does not exceed the service~~
363 ~~provider's cost for the software.]~~

364 (b) A service provider may charge a consumer for providing filtering under Subsection
365 (3)(a).

366 (4) If the attorney general determines that a service provider violates Subsection (1) or

367 (2), the attorney general shall:

368 (a) notify the service provider that the service provider is in violation of Subsection (1)
369 or (2); and

370 (b) notify the service provider that the service provider has 30 days to comply with the
371 provision being violated or be subject to Subsection (5).

372 (5) A service provider that violates Subsection (1) or (2) is:

373 (a) subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2),
374 up to \$10,000 per day; and

375 (b) guilty of a class A misdemeanor if:

376 (i) the service provider knowingly or intentionally fails to comply with Subsection (1);

377 or

378 (ii) the service provider fails to provide the notice required by Subsection (2).

379 (6) A proceeding to impose a civil fine under Subsection (5)(a) may only be brought by
380 the attorney general in a court of competent jurisdiction.

381 (7) (a) The Division of Consumer Protection within the Department of Commerce
382 shall, in consultation with other entities as the Division of Consumer Protection considers
383 appropriate, test the effectiveness of a service provider's system for blocking material harmful
384 to minors under Subsection (1) at least annually.

385 (b) The results of testing by the Division of Consumer Protection under Subsection
386 (7)(a) shall be made available to:

387 (i) the service provider that is the subject of the test; and

388 (ii) the public.

389 (c) The Division of Consumer Protection shall make rules in accordance with Title 63,
390 Chapter 46a, Utah Administrative Rulemaking Act, to fulfil its duties under this section.

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

392 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**
393 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

394 (1) As used in this section:

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

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

397 (c) "Employed" or "carries on a vocation" includes employment that is full time or part

398 time, whether financially compensated, volunteered, or for the purpose of government or
399 educational benefit.

400 (d) "Notification" means a person's acquisition of information from the department
401 about a sex offender, including his place of habitation, physical description, and other
402 information as provided in Subsections (12) and (13).

403 (e) "Register" means to comply with the rules of the department made under this
404 section.

405 (f) "Sex offender" means any person:

406 (i) convicted by this state of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

426 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
427 Subsection (1)(f)(i);

428 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to

429 commit a crime in another state or by the United States government that is substantially
430 equivalent to the offenses listed in Subsection (1)(f)(i) and who is:

431 (A) a Utah resident; or

432 (B) not a Utah resident, but who is in the state for ten days, regardless of whether or
433 not the offender intends to permanently reside in this state;

434 (iii) who is required to register as a sex offender in any other state or United States
435 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
436 the offender intends to permanently reside in this state;

437 (iv) who is a nonresident regularly employed, working, or a student in this state and
438 was convicted of one or more offenses listed in Subsection (1)(f)(i), or any substantially
439 equivalent offense in another state or by the United States government, and as a result of the
440 conviction, is required to register in the person's state of residence;

441 (v) who is found not guilty by reason of insanity in this state, any other state, or by the
442 United States government of one or more offenses listed in Subsection (1)(f)(i); or

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

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

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

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

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

454 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(f), within
455 three working days; and

456 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(f),
457 within five working days.

458 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(f), the
459 convicting court shall within three working days forward a copy of the judgment and sentence

460 to the department.

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

463 (a) being placed on probation;

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

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

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

470 (e) termination of probation or parole.

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

474 (a) commitment to the correctional facility; and

475 (b) release from confinement.

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

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

480 (9) A sex offender convicted by any other state or by the United States government is
481 required to register under Subsection (1)(f)(ii) and shall register with the department within ten
482 days of entering the state, regardless of the length of stay.

483 (10) (a) Except as provided in Subsections (10)(b), (c), and (d), a sex offender shall, for
484 the duration of the sentence and for ten years after termination of sentence or custody of the
485 division, register annually during the month of the offender's birth and again within five days of
486 every change of his place of habitation, vehicle information, or educational information
487 required to be submitted under Subsection (12).

488 (b) Except as provided Subsections (10)(c) and (d), a sex offender who is convicted of
489 an offense listed in Subsection (1)(f)(i) by another state shall register for the time period
490 required by the state where the offender was convicted if the state's registration period for the

491 offense that the offender was convicted of is in excess of the ten years from completion of the
492 sentence registration period that is required under Subsection (10)(a).

493 (c) (i) A sex offender convicted as an adult of any of the offenses listed in Subsection
494 (10)(c)(ii) shall, for the offender's lifetime, register annually during the month of the offender's
495 birth and again within five days of every change of the offender's place of habitation, vehicle
496 information, or educational information required to be submitted under Subsection (12). This
497 registration requirement is not subject to exemptions and may not be terminated or altered
498 during the offender's lifetime.

499 (ii) Offenses referred to in Subsection (10)(c)(i) are:

500 (A) any offense listed in Subsection (1)(f) if, at the time of the conviction, the offender
501 has previously been convicted of an offense listed in Subsection (1)(f) or has previously been
502 required to register as a sex offender for an offense committed as a juvenile;

503 ~~[(B) Section 76-5-402.1, rape of a child;]~~

504 ~~[(C) Section 76-5-402.3, object rape of a child;]~~

505 (B) Section 76-4-401, enticing a minor over the Internet, if the offense is a class A or
506 felony violation;

507 (C) Section 76-5-301.1, child kidnapping;

508 (D) Section 76-5-402, rape;

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

510 (F) Section 76-5-402.2, object rape;

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

512 ~~[(H)]~~ (H) Section 76-5-403, forcible sodomy;

513 ~~[(I)]~~ (I) Section 76-5-403.1, sodomy on a child;

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

515 ~~[(G)]~~ Section 76-5-301.1, child kidnapping;

516 ~~[(H)]~~ (J) Section 76-5-404.1, sexual abuse of a child;

517 ~~[(I)]~~ (K) Subsection 76-5-404.1(4), aggravated sexual abuse of a child;

518 ~~[(J)]~~ Section 76-5a-3, sexual exploitation of a minor;

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

520 (M) Section 76-5a-3, sexual exploitation of a minor; or

521 ~~[(K)]~~ (N) Section 76-7-102, incest[?].

522 [~~(L) Section 76-5-402, rape; or~~]

523 [~~(M) Section 76-5-402.2, object rape.~~]

524 (d) Notwithstanding Subsections (10)(a), (b), and (c), a sex offender who is confined in
525 a secure facility or in a state mental hospital is not required to register annually.

526 (e) A sex offender that is required to register annually under this Subsection (10) shall
527 surrender the sex offender's license certificate or identification card as required under
528 Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification
529 card as provided under Section 53-3-205 or 53-3-804.

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

533 (a) the continuing registration requirements of this section during the period of
534 registration required in Subsection (10), including:

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

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

539 (iii) notification to the out-of-state agency where the offender is living, whether or not
540 the offender is a resident of that state; and

541 (b) the driver license certificate or identification card surrender requirement under
542 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
543 53-3-804.

544 (12) A sex offender shall provide the department with the following information:

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

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

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

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

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

551 (f) each educational institution in Utah at which the sex offender is employed, carries
552 on a vocation, or is a student, and any change of enrollment or employment status of the sex

553 offender at any educational institution.

554 (13) The department shall:

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

556 (i) the crimes the sex offender was convicted of or adjudicated delinquent for; and

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

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

559 enrollment or employment at an educational institution is:

560 (i) (A) promptly made available to any law enforcement agency that has jurisdiction

561 where the institution is located if the educational institution is an institution of higher

562 education; or

563 (B) promptly made available to the district superintendent of the school district where

564 the offender is enrolled if the educational institution is an institution of primary education; and

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

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

567 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not

568 less than 90 days and also at least one year of probation if:

569 (A) the sex offender is required to register for a felony conviction of an offense listed

570 in Subsection (1)(f)(i); or

571 (B) the sex offender is required to register for the offender's lifetime under Subsection

572 (10)(c); or

573 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for

574 not fewer than 90 days and also at least one year of probation if the sex offender is required to

575 register for a misdemeanor conviction of an offense listed in Subsection (1)(f)(i).

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

577 violates this section from serving the term required under Subsection (14)(a). This Subsection

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

579 (15) Notwithstanding Title 63, Chapter 2, Government Records Access and

580 Management Act, information in Subsections (12) and (13) collected and released under this

581 section is public information.

582 (16) (a) If a sex offender is to be temporarily sent outside a secure facility in which he

583 is confined on any assignment, including, without limitation, firefighting or disaster control,

584 the official who has custody of the offender shall, within a reasonable time prior to removal
585 from the secure facility, notify the local law enforcement agencies where the assignment is to
586 be filled.

587 (b) This Subsection (16) does not apply to any person temporarily released under guard
588 from the institution in which he is confined.

589 (17) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a
590 person convicted of any offense listed in Subsection (1)(f) is not relieved from the
591 responsibility to register as required under this section.

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

593 (a) may not change his name:

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

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

596 (b) may not change his name at any time, if registration is under Subsection (10)(c).

597 (19) The department may make rules necessary to implement this section, including:

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

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

600 (20) Any information regarding the identity or location of a victim shall be redacted by
601 the department from information provided under Subsections (12) and (13).

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

604 (22) The department shall post registry information on the Internet, and the website
605 shall contain a disclaimer informing the public of the following:

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

608 (b) members of the public are not allowed to use the information to harass or threaten
609 sex offenders or members of their families; and

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

612 (23) The website shall be indexed by both the surname of the offender and by postal
613 codes.

614 (24) The department shall construct the website so that users, before accessing registry

615 information, must indicate that they have read the disclaimer, understand it, and agree to
616 comply with its terms.

617 (25) The department, its personnel, and any individual or entity acting at the request or
618 upon the direction of the department are immune from civil liability for damages for good faith
619 compliance with this section and will be presumed to have acted in good faith by reporting
620 information.

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

623 (27) (a) Each sex offender required to register under Subsection (10), who is not
624 currently under the jurisdiction of the Department of Corrections, shall pay to the department
625 an annual fee of \$75 each year the sex offender is subject to the registration requirements.

626 (b) The department shall deposit fees under this Subsection (27) in the General Fund as
627 a dedicated credit, to be used by the department for maintaining the sex offender registry under
628 this section and monitoring sex offender registration compliance, including the costs of:

629 (i) data entry;

630 (ii) processing registration packets;

631 (iii) updating registry information;

632 (iv) ensuring sex offender compliance with registration requirements under this
633 section; and

634 (v) apprehending offenders who are in violation of the sex offender registration
635 requirements under this section.

636 **Section 9. Repealer.**

637 This bill repeals:

638 **Section 67-5-19, Adult content registry.**

639 **Section 76-10-1232, Data service providers -- Adult content registry.**

640 **Section 10. Effective date.**

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

**Revised
Fiscal Note**

**H.B. 5 1st Sub. (Buff) - Internet Sexual Content - Protection of Minors - As
Amended**
2007 General Session
State of Utah

State Impact

Enactment of this bill will require an ongoing appropriation of \$47,200 from the General Fund to the Department of Corrections resulting from penalty enhancements specified in the bill. The Department only needs half of that amount in the first year so the amount is reduced by \$23,600. Future years will see continued cost increases as the number of incarcerated offenders grow and their sentences extended. This bill will also, by eliminating the adult content registry, create an ongoing savings to the General Fund of \$120,000 (\$70,000 to the Office of Attorney General and \$50,000 to the Department of Commerce). The net impacts are savings of \$96,400 in FY 2008 and \$72,800 in FY 2009. In addition, Court revenue from the fine increases in HB 5 S1 will generate an additional \$4,800 GF annually.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	(\$120,000)	(\$120,000)	\$0	\$0	\$0
General Fund	\$0	\$47,200	\$47,200	\$0	\$4,800	\$4,800
General Fund, One-Time	\$0	(\$23,600)	\$0	\$0	\$0	\$0
Total	\$0	(\$96,400)	(\$72,800)	\$0	\$4,800	\$4,800

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
