

INTERNET SEXUAL PREDATOR PENALTIES

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Darin G. Peterson

LONG TITLE

General Description:

This bill amends the Criminal Code by amending the penalties for enticing a minor over the Internet in order to commit a sexual offense.

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 first degree felony with a specified penalty; and

- ▶ 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.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



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

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

30 **76-4-401. Enticing a minor over the Internet -- Elements -- Penalties.**

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

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

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

40 (a) a first degree felony is a ~~[second degree felony]~~ first degree felony punishable by
41 imprisonment for an indeterminate term of not fewer than three years and which may be for
42 life;

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

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

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

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

47 (4) (a) When a person who commits a felony violation of this section has been
48 previously convicted of an offense under Subsection (4)(b), the court may not in any way
49 shorten the prison sentence. The court may not:

50 (i) grant probation;

51 (ii) suspend the execution or imposition of the sentence;

52 (iii) enter a judgment for a lower category of offense; or

53 (iv) order hospitalization.

54 (b) The sections referred to in Subsection (4)(a) are:

55 (i) Section 76-4-401, enticing a minor over the Internet;

56 (ii) Section 76-5-301.1, child kidnapping;

57 (iii) Section 76-5-402, rape;

58 (iv) Section 76-5-402.1, rape of a child;

- 59 (v) Section 76-5-402.2, object rape;
60 (vi) Section 76-5-402.3, object rape of a child;
61 (vii) Subsection 76-5-403(2), forcible sodomy;
62 (viii) Section 76-5-403.1, sodomy on a child;
63 (ix) Section 76-5-404, forcible sexual abuse;
64 (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;
65 (xi) Section 76-5-405, aggravated sexual assault;
66 (xii) any offense in any other state or federal jurisdiction which constitutes or would
67 constitute a crime in Subsections (4)(b)(i) through (xi); or
68 (xiii) the attempt to commit any of the offenses in Subsections (4)(b)(i) through (xii).
69 Section 2. Section **77-27-21.5** is amended to read:
70 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**
71 **and courts to report -- Registration -- Penalty -- Effect of expungement.**
72 (1) As used in this section:
73 (a) "Department" means the Department of Corrections.
74 (b) "Division" means the Division of Juvenile Justice Services.
75 (c) "Employed" or "carries on a vocation" includes employment that is full time or part
76 time, whether financially compensated, volunteered, or for the purpose of government or
77 educational benefit.
78 (d) "Notification" means a person's acquisition of information from the department
79 about a sex offender, including his place of habitation, physical description, and other
80 information as provided in Subsections (12) and (13).
81 (e) "Register" means to comply with the rules of the department made under this
82 section.
83 (f) "Sex offender" means any person:
84 (i) convicted by this state of:
85 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor
86 over the Internet;
87 (B) Section 76-5-301.1, kidnapping of a child;
88 (C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;
89 (D) Section 76-5-401.1, sexual abuse of a minor;

- 90 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 91 (F) Section 76-5-402, rape;
- 92 (G) Section 76-5-402.1, rape of a child;
- 93 (H) Section 76-5-402.2, object rape;
- 94 (I) Section 76-5-402.3, object rape of a child;
- 95 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 96 (K) Section 76-5-403.1, sodomy on a child;
- 97 (L) Section 76-5-404, forcible sexual abuse;
- 98 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 99 (N) Section 76-5-405, aggravated sexual assault;
- 100 (O) Section 76-5a-3, sexual exploitation of a minor;
- 101 (P) Section 76-7-102, incest;
- 102 (Q) Section 76-9-702.5, lewdness involving a child;
- 103 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
- 104 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
- 105 Subsection (1)(f)(i);
- 106 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 107 commit a crime in another state or by the United States government that is substantially
- 108 equivalent to the offenses listed in Subsection (1)(f)(i) and who is:
- 109 (A) a Utah resident; or
- 110 (B) not a Utah resident, but who is in the state for ten days, regardless of whether or
- 111 not the offender intends to permanently reside in this state;
- 112 (iii) who is required to register as a sex offender in any other state or United States
- 113 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
- 114 the offender intends to permanently reside in this state;
- 115 (iv) who is a nonresident regularly employed, working, or a student in this state and
- 116 was convicted of one or more offenses listed in Subsection (1)(f)(i), or any substantially
- 117 equivalent offense in another state or by the United States government, and as a result of the
- 118 conviction, is required to register in the person's state of residence;
- 119 (v) who is found not guilty by reason of insanity in this state, any other state, or by the
- 120 United States government of one or more offenses listed in Subsection (1)(f)(i); or

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

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

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

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

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

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

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

136 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(f), the
137 convicting court shall within three working days forward a copy of the judgment and sentence
138 to the department.

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

141 (a) being placed on probation;

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

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

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

148 (e) termination of probation or parole.

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

152 (a) commitment to the correctional facility; and

153 (b) release from confinement.

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

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

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

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

166 (b) Except as provided Subsections (10)(c) and (d), a sex offender who is convicted of
167 an offense listed in Subsection (1)(f)(i) by another state shall register for the time period
168 required by the state where the offender was convicted if the state's registration period for the
169 offense that the offender was convicted of is in excess of the ten years from completion of the
170 sentence registration period that is required under Subsection (10)(a).

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

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

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

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

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

- 183 (B) Section 76-5-301.1, child kidnapping;
 184 (C) Section 76-5-402, rape;
 185 (D) Section 76-5-402.1, rape of a child;
 186 (E) Section 76-5-402.2, object rape;
 187 (F) Section 76-5-402.3, object rape of a child;
 188 [~~(D)~~] (G) Section 76-5-403, forcible sodomy;
 189 [~~(E)~~] (H) Section 76-5-403.1, sodomy on a child;
 190 [~~(F)~~] Section 76-5-405, aggravated sexual assault;
 191 [~~(G)~~] Section 76-5-301.1, child kidnapping;
 192 [~~(H)~~] (I) Section 76-5-404.1, sexual abuse of a child;
 193 [~~(I)~~] (J) Subsection 76-5-404.1(4), aggravated sexual abuse of a child;
 194 [~~(J)~~] Section 76-5a-3, sexual exploitation of a minor;
 195 (K) Section 76-5-405, aggravated sexual assault;
 196 (L) Section 76-5a-3, sexual exploitation of a minor; or
 197 [~~(K)~~] (M) Section 76-7-102, incest[;];
 198 [~~(L)~~] Section 76-5-402, rape; or]
 199 [~~(M)~~] Section 76-5-402.2, object rape.;
- 200 (d) Notwithstanding Subsections (10)(a), (b), and (c), a sex offender who is confined in
 201 a secure facility or in a state mental hospital is not required to register annually.
- 202 (e) A sex offender that is required to register annually under this Subsection (10) shall
 203 surrender the sex offender's license certificate or identification card as required under
 204 Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification
 205 card as provided under Section 53-3-205 or 53-3-804.
- 206 (11) An agency in the state that registers a sex offender on probation, a sex offender
 207 who has been released from confinement to parole status or termination, or a sex offender
 208 whose sentence has expired shall inform the offender of the duty to comply with:
- 209 (a) the continuing registration requirements of this section during the period of
 210 registration required in Subsection (10), including:
- 211 (i) notification to the state agencies in the states where the registrant presently resides
 212 and plans to reside when moving across state lines;
- 213 (ii) verification of address at least every 60 days pursuant to a parole agreement for

214 lifetime parolees; and

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

217 (b) the driver license certificate or identification card surrender requirement under
218 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
219 53-3-804.

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

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

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

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

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

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

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

230 (13) The department shall:

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

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

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

234 (b) ensure that the registration information collected regarding a sex offender's
235 enrollment or employment at an educational institution is:

236 (i) (A) promptly made available to any law enforcement agency that has jurisdiction
237 where the institution is located if the educational institution is an institution of higher
238 education; or

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

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

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

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

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

247 (B) the sex offender is required to register for the offender's lifetime under Subsection
248 (10)(c); or

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

252 (b) Neither the court nor the Board of Pardons and Parole may release a person who
253 violates this section from serving the term required under Subsection (14)(a). This Subsection
254 (14)(b) supersedes any other provision of the law contrary to this section.

255 (15) Notwithstanding Title 63, Chapter 2, Government Records Access and
256 Management Act, information in Subsections (12) and (13) collected and released under this
257 section is public information.

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

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

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

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

269 (a) may not change his name:

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

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

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

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

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

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

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

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

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

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

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

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

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

290 (24) The department shall construct the website so that users, before accessing registry
291 information, must indicate that they have read the disclaimer, understand it, and agree to
292 comply with its terms.

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

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

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

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

305 (i) data entry;

306 (ii) processing registration packets;

- 307 (iii) updating registry information;
308 (iv) ensuring sex offender compliance with registration requirements under this
309 section; and
310 (v) apprehending offenders who are in violation of the sex offender registration
311 requirements under this section.

Legislative Review Note
as of 11-27-06 1:51 PM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-12-06 11:20 AM

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

H.B. 5 - Internet Sexual Predator Penalties

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will require additional General Fund in the amounts of \$91,600 in FY 2008 and \$183,300 in FY 2009 since the penalty enhancement will imprison some individuals that were not incarcerated in the past. Future years will see continued cost increases as the number of incarcerated offenders grow and their sentences are extended.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
General Fund	\$0	\$91,600	\$183,300	\$0	\$0	\$0
Total	\$0	\$91,600	\$183,300	\$0	\$0	\$0

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.