

SEX OFFENDERS REGISTRY AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies the Utah Code of Criminal Procedure regarding fees paid by persons who are required to register as sex offenders.

Highlighted Provisions:

This bill:

- changes "jurisdiction" to "custody" in language regarding sex offenders who are required to register and who are not currently under the custody of the Department of Corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. Section **77-27-21.5** is amended to read:

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



(1) As used in this section:

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

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

(c) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

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

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

(f) "Sex offender" means any person:

(i) convicted by this state of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
60 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
61 Subsection (1)(f)(i);
62 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
63 commit a crime in another state or by the United States government that is substantially
64 equivalent to the offenses listed in Subsection (1)(f)(i) and who is:
65 (A) a Utah resident; or
66 (B) not a Utah resident, but who is in the state for ten days, regardless of whether or
67 not the offender intends to permanently reside in this state;
68 (iii) who is required to register as a sex offender in any other state or United States
69 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
70 the offender intends to permanently reside in this state;
71 (iv) who is a nonresident regularly employed, working, or a student in this state and
72 was convicted of one or more offenses listed in Subsection (1)(f)(i), or any substantially
73 equivalent offense in another state or by the United States government, and as a result of the
74 conviction, is required to register in the person's state of residence;
75 (v) who is found not guilty by reason of insanity in this state, any other state, or by the
76 United States government of one or more offenses listed in Subsection (1)(f)(i); or
77 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
78 (1)(f)(i) and who has been committed to the division for secure confinement and remains in the
79 division's custody 30 days prior to the person's 21st birthday.
80 (2) The department, to assist in investigating sex-related crimes and in apprehending
81 offenders, shall:
82 (a) develop and operate a system to collect, analyze, maintain, and disseminate
83 information on sex offenders and sex offenses; and
84 (b) make information collected and developed under this section available to the
85 public.
86 (3) Any law enforcement agency shall, in the manner prescribed by the department,
87 inform the department of:
88 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(f), within
89 three working days; and

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

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

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

(a) being placed on probation;

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

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

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

(e) termination of probation or parole.

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

(a) commitment to the correctional facility; and

(b) release from confinement.

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

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

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

(10) (a) Except as provided in Subsections (10)(b), (c), and (d), a sex offender shall, for the duration of the sentence and for ten years after termination of sentence or custody of the division, register annually during the month of the offender's birth and again within five days of every change of his place of habitation, vehicle information, or educational information

required to be submitted under Subsection (12).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A sex offender that is required to register annually under this Subsection (10) shall

surrender the sex offender's license certificate or identification card as required under Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as provided under Section 53-3-205 or 53-3-804.

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) The department shall:

(a) provide the following additional information when available:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) may not change his name:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 information.

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

248 (27) (a) Each sex offender required to register under Subsection (10), who is not
249 currently [~~under the jurisdiction~~] in the custody of the Department of Corrections, shall pay to
250 the department an annual fee of \$75 each year the sex offender is subject to the registration
251 requirements.

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

255 (i) data entry;

256 (ii) processing registration packets;

257 (iii) updating registry information;

258 (iv) ensuring sex offender compliance with registration requirements under this
259 section; and

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

Legislative Review Note

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Office of Legislative Research and General Counsel