

**SEX OFFENDERS' CONTACT WITH
CHILDREN**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: Darin G. Peterson

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure and requires a registered sex offender to obtain permission from a child's parent or guardian to allow a child younger than age 14 to accompany the offender.

Highlighted Provisions:

This bill:

▶ provides that it is a ~~third degree felony~~ **class A misdemeanor** for any sex offender whose offense was

against a child to request ~~or allow~~ **or solicit** a child younger than 14 to accompany the sex

offender for any purpose unless:

• the sex offender has in the sex offender's possession written permission from the child's parent or guardian authorizing the offender to accompany the child; ~~or~~

• the child's parent or guardian has given verbal permission and both the child and the sex offender are in the child's home or on the property appurtenant to the child's home; ~~or~~

the child is the natural child of the sex offender, and the offender is not prohibited by any court order, or probation or parole provision, from contact with the child; ~~or~~

▶ prohibits a defense of not knowing the actual age of the child; and

▶ extends the period of registration as a sex offender for five years, if the offender violates this provision.

Monies Appropriated in this Bill:

None

H.B. 161



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 77-27-21.5, as last amended by Laws of Utah 2007, Chapter 337

33 ENACTS:

34 77-27-21.8, Utah Code Annotated 1953



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

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

38 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**
39 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

40 (1) As used in this section:

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

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

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

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

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

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

52 (i) convicted by this state of:

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

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

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

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

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

- 59 (F) Section 76-5-402, rape;
- 60 (G) Section 76-5-402.1, rape of a child;
- 61 (H) Section 76-5-402.2, object rape;
- 62 (I) Section 76-5-402.3, object rape of a child;
- 63 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 64 (K) Section 76-5-403.1, sodomy on a child;
- 65 (L) Section 76-5-404, forcible sexual abuse;
- 66 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 67 (N) Section 76-5-405, aggravated sexual assault;
- 68 (O) Section 76-5a-3, sexual exploitation of a minor;
- 69 (P) Section 76-7-102, incest;
- 70 (Q) Section 76-9-702.5, lewdness involving a child;
- 71 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
- 72 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
- 73 Subsection (1)(f)(i);
- 74 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 75 commit a crime in another state or by the United States government that is substantially
- 76 equivalent to the offenses listed in Subsection (1)(f)(i) and who is:
- 77 (A) a Utah resident; or
- 78 (B) not a Utah resident, but who is in the state for ten days, regardless of whether or
- 79 not the offender intends to permanently reside in this state;
- 80 (iii) who is required to register as a sex offender in any other state or United States
- 81 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
- 82 the offender intends to permanently reside in this state;
- 83 (iv) who is a nonresident regularly employed, working, or a student in this state and
- 84 was convicted of one or more offenses listed in Subsection (1)(f)(i), or any substantially
- 85 equivalent offense in another state or by the United States government, and as a result of the
- 86 conviction, is required to register in the person's state of residence;
- 87 (v) who is found not guilty by reason of insanity in this state, any other state, or by the
- 88 United States government of one or more offenses listed in Subsection (1)(f)(i); or
- 89 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection

90 (1)(f)(i) and who has been committed to the division for secure confinement and remains in the
91 division's custody 30 days prior to the person's 21st birthday.

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

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

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

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

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

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

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

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

109 (a) being placed on probation;

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

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

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

116 (e) termination of probation or parole.

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

120 (a) commitment to the correctional facility; and

121 (b) release from confinement.

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

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

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

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

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

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

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

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

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

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

- 152 (D) Section 76-5-402, rape;
- 153 (E) Section 76-5-402.1, rape of a child;
- 154 (F) Section 76-5-402.2, object rape;
- 155 (G) Section 76-5-402.3, object rape of a child;
- 156 (H) Section 76-5-403, forcible sodomy;
- 157 (I) Section 76-5-403.1, sodomy on a child;
- 158 (J) Section 76-5-404.1, sexual abuse of a child;
- 159 (K) Subsection 76-5-404.1(4), aggravated sexual abuse of a child;
- 160 (L) Section 76-5-405, aggravated sexual assault;
- 161 (M) Section 76-5a-3, sexual exploitation of a minor; or
- 162 (N) Section 76-7-102, incest.
- 163 (d) Notwithstanding Subsections (10)(a), (b), and (c), a sex offender who is confined in
- 164 a secure facility or in a state mental hospital is not required to register annually.
- 165 (e) A sex offender that is required to register annually under this Subsection (10) shall
- 166 surrender the sex offender's license certificate or identification card as required under
- 167 Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification
- 168 card as provided under Section 53-3-205 or 53-3-804.
- 169 (f) A sex offender who violates Section 77-27-21.8 while required to register under this
- 170 section shall register as a sex offender for an additional five years subsequent to the registration
- 171 period otherwise required under this section.
- 172 (11) An agency in the state that registers a sex offender on probation, a sex offender
- 173 who has been released from confinement to parole status or termination, or a sex offender
- 174 whose sentence has expired shall inform the offender of the duty to comply with:
- 175 (a) the continuing registration requirements of this section during the period of
- 176 registration required in Subsection (10), including:
- 177 (i) notification to the state agencies in the states where the registrant presently resides
- 178 and plans to reside when moving across state lines;
- 179 (ii) verification of address at least every 60 days pursuant to a parole agreement for
- 180 lifetime parolees; and
- 181 (iii) notification to the out-of-state agency where the offender is living, whether or not
- 182 the offender is a resident of that state; and

183 (b) the driver license certificate or identification card surrender requirement under
184 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
185 53-3-804.

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

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

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

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

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

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

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

196 (13) The department shall:

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

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

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

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

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

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

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

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

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

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

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

214 (10)(c); or

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

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

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

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

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

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

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

235 (a) may not change his name:

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

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

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

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

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

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

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

244 (21) Nothing in this section shall be construed to create or impose any duty on any

245 person to request or obtain information regarding any sex offender from the department.

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

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

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

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

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

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

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

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

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

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

271 (i) data entry;

272 (ii) processing registration packets;

273 (iii) updating registry information;

274 (iv) ensuring sex offender compliance with registration requirements under this
275 section; and

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

278 Section 2. Section **77-27-21.8** is enacted to read:

279 **77-27-21.8. Sex offender in presence of a child -- Definitions -- Penalties.**

280 (1) As used in this section:

281 (a) "Accompany" means:

282 (i) to be in the presence of an individual; and

283 (ii) moving or traveling with that individual from one location to another, whether
284 outdoors, indoors, or in or on any type of vehicle.

285 (b) "Child" means an individual younger than 14 years of age.

286 (2) A sex offender subject to registration under Section ~~H→ [77-27-21.7]~~ **77-27-21.5** ~~←H~~
287 for the commission
288 of an offense committed against a child younger than 14 years of age is guilty of a ~~H→ [third-degree~~
289 **felony] class A misdemeanor** ~~←H~~ if the sex offender requests, invites, or ~~H→ [allows]~~ **solicits** ~~←H~~
288a1 a child to
288a accompany the sex offender ~~H→~~ , **under circumstances that do not constitute an attempt to**
288b **violate Section 76-5-301.1, child kidnapping** ~~←H~~ ,
289 unless:

290 (a) (i) the child's parent or guardian has provided to the sex offender written
291 authorization, including the specific date and location, for the sex offender to accompany the
292 child; and

293 (ii) the sex offender has possession of the written authorization and is accompanying
294 the child only at the date and location specified in the authorization; ~~H→ [or]~~ ~~←H~~

295 (b) the child's parent or guardian has given verbal authorization for the sex offender to
296 accompany the child either in the child's residence or on property appurtenant to the child's
297 residence, but in no other location ~~H→~~ ; or

297a (c) **the child is the natural child of the sex offender, and the offender is not prohibited**
297b **by any court order, or probation or parole provision, from contact with the child** ~~←H~~ .

298 (3) A sex offender convicted of a violation of Subsection (2) is subject to registration
299 under Section ~~H→ [77-21-21.7]~~ **77-27-21.5** ~~←H~~ for an additional five years subsequent to the
299a required registration

300 under Section ~~H→ [77-21-21.7]~~ **77-27-21.5** ~~←H~~ .

301 (4) It is not a defense to a prosecution under this section that the defendant mistakenly
302 believed the individual to be 14 years of age or older at the time of the offense or was unaware
303 of the individual's true age.

304 (5) This section does not apply if a sex offender is acting to rescue a child who is in an
305 emergency and life-threatening situation.

Legislative Review Note
as of 1-9-08 7:02 AM

Office of Legislative Research and General Counsel

H.B. 161 - Sex Offenders' Contact with Children - As Amended

Fiscal Note

2008 General Session
State of Utah

State Impact

Corrections will require General Funds of \$51,400 in FY 2009, \$115,500 in FY 2010, and \$154,100 in FY 2011 and each fiscal year thereafter. The Board of Pardons and Parole will require General Funds \$59,900 in FY 2009 and \$52,000 in FY 2010 and each fiscal year thereafter. The Courts will require ongoing General Funds of \$24,100 beginning FY 2009.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$230,200	\$230,200	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$94,800)	(\$38,600)	\$0	\$0	\$0
Total	\$0	\$135,400	\$191,600	\$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.
