

**ENTICING A MINOR BY ELECTRONIC**

**MEANS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kerry W. Gibson**

Senate Sponsor: Jon J. Greiner

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding the offense of enticing a minor for the purpose of luring the minor to commit a sexual offense in violation of state law.

**Highlighted Provisions:**

This bill:

- ▶ modifies the offense of enticing a minor for unlawful sexual purposes by use of the Internet so that the offense includes the use of text messaging;
- ▶ clarifies a separate offense of when a person initiates contact with a minor by use of the Internet or text messaging, and subsequently entices the minor by electronic or written means;
- ▶ provides definitions; and
- ▶ provides technical cross reference amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-4-401**, as last amended by Laws of Utah 2007, Chapter 337



28 77-27-21.5, as last amended by Laws of Utah 2007, Chapter 337

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

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

32 **76-4-401. Enticing a minor -- Elements -- Penalties.**

33 (1) As used in this section:

34 (a) "Minor" means a person who is under the age of 18.

35 (b) "Text messaging" means a communication in the form of electronic text or one or  
 36 more electronic images sent by the actor from a telephone or computer to another person's  
 37 telephone or computer by addressing the communication to the person's telephone number.

38 ~~[(+)]~~ (2) (a) A person commits enticement of a minor ~~[over the Internet]~~ when the  
 39 person knowingly uses ~~[a computer]~~ or attempts to use the Internet or text messaging to solicit,  
 40 seduce, lure, or entice~~[-, or attempts to use a computer to solicit, seduce, lure, or entice]~~ a minor  
 41 or ~~[a]~~ another person that the ~~[defendant]~~ actor believes to be a minor to engage in any sexual  
 42 activity which is a violation of state criminal law.

43 (b) A person commits enticement of a minor ~~H→~~ [over the Internet] ~~←H~~ when the person  
 44 knowingly uses ~~[a computer]~~ the Internet or text messaging to:

45 (i) initiate contact with a minor or a person the ~~[defendant]~~ actor believes to be a  
 46 minor; and

47 (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written  
 48 means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the  
 49 minor or a person the ~~[defendant]~~ actor believes to be the minor to engage in any sexual  
 50 activity which is a violation of state criminal law.

51 ~~[(2)]~~ (3) It is not a defense to the crime of enticing a minor under Subsection ~~[(+)]~~ (2),  
 52 or an attempt to commit this offense, that a law enforcement officer or an undercover operative  
 53 who is working with a law enforcement agency was involved in the detection or investigation  
 54 of the offense.

55 ~~[(3)]~~ (4) An enticement of a minor under Subsection ~~[(+)]~~ (2)(a) or (b) with the intent  
 56 to commit:

57 (a) a first degree felony is a:

58 (i) second degree felony upon the first conviction for violation of this Subsection ~~[(3)]~~

59 ~~(4)~~(a); and

60 (ii) first degree felony punishable by imprisonment for an indeterminate term of not  
61 fewer than three years and which may be for life, upon a second or any subsequent conviction  
62 for a violation of this Subsection [~~(3)~~] (4)(a);

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

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

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

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

67 [~~(4)~~] (5) (a) When a person who commits a felony violation of this section has been  
68 previously convicted of an offense under Subsection [~~(4)~~] (5)(b), the court may not in any way  
69 shorten the prison sentence, and the court may not:

70 (i) grant probation;

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

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

73 (iv) order hospitalization.

74 (b) The sections referred to in Subsection [~~(4)~~] (5)(a) are:

75 (i) Section 76-4-401, enticing a minor [~~over the Internet~~];

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

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

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

79 (v) Section 76-5-402.2, object rape;

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

81 (vii) Subsection 76-5-403(2), forcible sodomy;

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

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

84 (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

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

86 (xii) any offense in any other state or federal jurisdiction which constitutes or would  
87 constitute a crime in Subsections (4)(b)(i) through (xi); or

88 (xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in  
89 Subsections (4)(b)(i) through (xii).

90 Section 2. Section 77-27-21.5 is amended to read:

91 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**  
92 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

93 (1) As used in this section:

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

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

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

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

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

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

105 (i) convicted by this state of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 121 (O) Section 76-5a-3, sexual exploitation of a minor;
- 122 (P) Section 76-7-102, incest;
- 123 (Q) Section 76-9-702.5, lewdness involving a child;
- 124 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
- 125 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
- 126 Subsection (1)(f)(i);
- 127 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 128 commit a crime in another state or by the United States government that is substantially
- 129 equivalent to the offenses listed in Subsection (1)(f)(i) and who is:
- 130 (A) a Utah resident; or
- 131 (B) not a Utah resident, but who is in the state for ten days, regardless of whether or
- 132 not the offender intends to permanently reside in this state;
- 133 (iii) who is required to register as a sex offender in any other state or United States
- 134 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
- 135 the offender intends to permanently reside in this state;
- 136 (iv) who is a nonresident regularly employed, working, or a student in this state and
- 137 was convicted of one or more offenses listed in Subsection (1)(f)(i), or any substantially
- 138 equivalent offense in another state or by the United States government, and as a result of the
- 139 conviction, is required to register in the person's state of residence;
- 140 (v) who is found not guilty by reason of insanity in this state, any other state, or by the
- 141 United States government of one or more offenses listed in Subsection (1)(f)(i); or
- 142 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
- 143 (1)(f)(i) and who has been committed to the division for secure confinement and remains in the
- 144 division's custody 30 days prior to the person's 21st birthday.
- 145 (2) The department, to assist in investigating sex-related crimes and in apprehending
- 146 offenders, shall:
- 147 (a) develop and operate a system to collect, analyze, maintain, and disseminate
- 148 information on sex offenders and sex offenses; and
- 149 (b) make information collected and developed under this section available to the
- 150 public.
- 151 (3) Any law enforcement agency shall, in the manner prescribed by the department,

152 inform the department of:

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

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

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

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

162 (a) being placed on probation;

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

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

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

169 (e) termination of probation or parole.

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

173 (a) commitment to the correctional facility; and

174 (b) release from confinement.

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

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

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

182 (10) (a) Except as provided in Subsections (10)(b), (c), and (d), a sex offender shall, for

183 the duration of the sentence and for ten years after termination of sentence or custody of the  
184 division, register annually during the month of the offender's birth and again within five days of  
185 every change of his place of habitation, vehicle information, or educational information  
186 required to be submitted under Subsection (12).

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

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

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

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

202 (B) Section 76-4-401, enticing a minor [~~over the Internet~~], if the offense is a class A or  
203 felony violation;

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

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

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

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

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

209 (H) Section 76-5-403, forcible sodomy;

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

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

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

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

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

215 (N) Section 76-7-102, incest.

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

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

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

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

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

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

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

233 (b) the driver license certificate or identification card surrender requirement under  
234 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or  
235 53-3-804.

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

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

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

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

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

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

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



245 offender at any educational institution.

246 (13) The department shall:

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

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

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

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

251 enrollment or employment at an educational institution is:

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

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

254 education; or

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

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

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

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

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

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

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

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

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

264 (10)(c); or

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

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

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

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

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

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

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

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

273 section is public information.

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

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

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

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

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

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

285 (a) may not change his name:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 321 (i) data entry;
- 322 (ii) processing registration packets;
- 323 (iii) updating registry information;
- 324 (iv) ensuring sex offender compliance with registration requirements under this  
325 section; and

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

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**Legislative Review Note**  
as of 1-22-08 3:36 PM

**Office of Legislative Research and General Counsel**

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**H.B. 327 - Enticing a Minor by Electronic Means**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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