

1 **ENTICING A MINOR BY ELECTRONIC**

2 **MEANS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kerry W. Gibson**

6 Senate Sponsor: Jon J. Greiner

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies the offense of enticing a minor for unlawful sexual purposes by use of the
15 Internet so that the offense includes the use of text messaging;

16 ▶ clarifies a separate offense of when a person initiates contact with a minor by use of
17 the Internet or text messaging, and subsequently entices the minor by electronic or
18 written means;

19 ▶ provides definitions; and

20 ▶ provides technical cross reference amendments.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **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

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 [~~(1)~~] (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 [~~over the Internet~~] 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 minor;
46 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 minor
49 or a person the [~~defendant~~] actor believes to be the minor to engage in any sexual activity which
50 is a violation of state criminal law.

51 [~~(2)~~] (3) It is not a defense to the crime of enticing a minor under Subsection [~~(1)~~] (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 of
54 the offense.

55 [~~(3)~~] (4) An enticement of a minor under Subsection [~~(1)~~] (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 public.

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

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

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

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

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

161 (a) being placed on probation;

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

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

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

168 (e) termination of probation or parole.

169 (6) A sex offender not in the custody of the department and who is confined in a

170 correctional facility not operated by or under contract to the department shall be registered with
171 the department by the sheriff of the county in which the offender is confined upon:

172 (a) commitment to the correctional facility; and

173 (b) release from confinement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 (13) The department shall:

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

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

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

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

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

254 (B) promptly made available to the district superintendent of the school district where
255 the offender is enrolled if the educational institution is an institution of primary education; and
256 (ii) entered into the appropriate state records or data system.

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

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

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

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

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

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

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

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

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

280 (17) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a
281 person convicted of any offense listed in Subsection (1)(f) is not relieved from the responsibility

282 to register as required under this section.

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

284 (a) may not change his name:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

308 (25) The department, its personnel, and any individual or entity acting at the request or
309 upon the direction of the department are immune from civil liability for damages for good faith

310 compliance with this section and will be presumed to have acted in good faith by reporting
311 information.

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

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

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

320 (i) data entry;

321 (ii) processing registration packets;

322 (iii) updating registry information;

323 (iv) ensuring sex offender compliance with registration requirements under this section;

324 and

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