

SEX OFFENDER DEFINITION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure regarding the definition of a sex offender.

Highlighted Provisions:

This bill:

▶ adds lewdness and sexual battery as offenses for which a convicted person must register as a sex offender, if the person is convicted of either offense ~~H→~~ [two] three ~~←H~~ or more times; and

▶ provides that if a person is convicted ~~H→~~ [~~one time each of~~] a total of three times of the offenses ~~←H~~ lewdness and sexual battery, the person must register as a sex offender.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-27-21.5, as last amended by Laws of Utah 2008, Chapters 133, 342, 355, and 382

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

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



28 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**
29 **Law enforcement and courts to report -- Registration -- Penalty -- Effect of expungement.**

30 (1) As used in this section:

31 (a) "Business day" means a day on which state offices are open for regular business.

32 (b) "Department" means the Department of Corrections.

33 (c) "Division" means the Division of Juvenile Justice Services.

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

37 (e) "Indian Country" means:

38 (i) all land within the limits of any Indian reservation under the jurisdiction of the
39 United States government, regardless of the issuance of any patent, and includes rights-of-way
40 running through the reservation;

41 (ii) all dependent Indian communities within the borders of the United States whether
42 within the original or subsequently acquired territory, and whether or not within the limits of a
43 state; and

44 (iii) all Indian allotments, including the Indian allotments to which the Indian titles to
45 have not been extinguished, including rights-of-way running through the allotments.

46 (f) "Jurisdiction" means any state, Indian County, or United States Territory.

47 (g) "Kidnap offender" means any person other than a natural parent of the victim who:

48 (i) has been convicted in this state of a violation of:

49 (A) Section 76-5-301, kidnapping;

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

51 (C) Section 76-5-302, aggravated kidnapping;

52 (D) Section 76-5-304, unlawful detention; or

53 (E) attempting, soliciting, or conspiring to commit any felony offense listed in

54 Subsections (1)(g)(i)(A) through ~~[(G)]~~ (D);

55 (ii) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
56 commit a crime in another jurisdiction that is substantially equivalent to the offenses listed in
57 Subsection (1)(g)(i) and who is:

58 (A) a Utah resident; or

59 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
60 ten or more days, regardless of whether or not the offender intends to permanently reside in this
61 state;

62 (iii) is required to register as an offender in any other jurisdiction, and who, in any 12
63 month period, is in this state for a total of ten or more days, regardless of whether or not the
64 offender intends to permanently reside in this state;

65 (iv) is a nonresident regularly employed or working in this state, or who is a student in
66 this state, and was convicted of one or more offenses listed in Subsection (1)(g) or (1)(n), or
67 any substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
68 required to register in the person's state of residence;

69 (v) is found not guilty by reason of insanity in this state or in any other jurisdiction of
70 one or more offenses listed in Subsection (1)(g); or

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

74 (h) "Natural parent" means a minor's biological or adoptive parent, and includes the
75 minor's noncustodial parent.

76 (i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex
77 offender as defined in Subsection (1)(n).

78 (j) "Online identifier" means any electronic mail, chat, instant messenger, social
79 networking, or similar name used for Internet communication. It does not include date of birth,
80 Social Security number, or PIN number.

81 (k) "Primary residence" means the location where the offender regularly resides, even
82 if the offender intends to move to another location or return to another location at any future
83 date.

84 (l) "Register" means to comply with the requirements of this section and administrative
85 rules of the department made under this section.

86 (m) "Secondary residence" means any real property that the offender owns or has a
87 financial interest in, and any location where, in any 12 month period, the offender stays
88 overnight a total of ten or more nights when not staying at the offender's primary residence.

89 (n) "Sex offender" means any person:

- 90 (i) convicted in this state of:
- 91 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;
- 92 (B) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 93 (C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;
- 94 (D) Section 76-5-401.1, sexual abuse of a minor;
- 95 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 96 (F) Section 76-5-402, rape;
- 97 (G) Section 76-5-402.1, rape of a child;
- 98 (H) Section 76-5-402.2, object rape;
- 99 (I) Section 76-5-402.3, object rape of a child;
- 100 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 101 (K) Section 76-5-403.1, sodomy on a child;
- 102 (L) Section 76-5-404, forcible sexual abuse;
- 103 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 104 (N) Section 76-5-405, aggravated sexual assault;
- 105 (O) Section 76-5a-3, sexual exploitation of a minor;
- 106 (P) Section 76-7-102, incest;
- 107 (Q) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense

108 two or more times;

109 (R) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the
110 offense ~~H~~→ [two] three ←~~H~~ or more times;

111 (S) ~~H~~→ (i) ←~~H~~ one violation of Subsection 76-9-702(1), lewdness, and ~~H~~→ [one violation]

111a two violations ←~~H~~ of Subsection

112 76-9-702(3), sexual battery; ~~H~~→ or

112a (ii) one violation of Subsection 76-9-702(3), sexual battery, and two violations of

112b Subsection 76-9-702(1), lewdness; ←~~H~~

113 [~~Q~~] (T) Section 76-9-702.5, lewdness involving a child;

114 [~~R~~] (U) Section 76-10-1306, aggravated exploitation of prostitution; or

115 [~~S~~] (V) attempting, soliciting, or conspiring to commit any felony offense listed in
116 Subsection (1)(n)(i);

117 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
118 commit a crime in another jurisdiction that is substantially equivalent to the offenses listed in
119 Subsection (1)(n)(i) and who is:

120 (A) a Utah resident; or

121 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
122 ten or more days, regardless of whether the offender intends to permanently reside in this state;

123 (iii) who is required to register as an offender in any other jurisdiction, and who, in any
124 12 month period, is in the state for a total of ten or more days, regardless of whether or not the
125 offender intends to permanently reside in this state;

126 (iv) who is a nonresident regularly employed or working in this state or who is a
127 student in this state and was convicted of one or more offenses listed in Subsection (1)(n)(i), or
128 any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is
129 required to register in the person's jurisdiction of residence;

130 (v) who is found not guilty by reason of insanity in this state, or in any other
131 jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or

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

135 (o) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
136 any jurisdiction.

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

139 (a) develop and operate a system to collect, analyze, maintain, and disseminate
140 information on offenders and sex and kidnap offenses;

141 (b) make information listed in Subsection (25) available to the public; and

142 (c) require that a sex offender provide to the department any password required for use
143 with an online identifier. Passwords provided to the department may not be disclosed to the
144 public.

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

147 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(g) or (n),
148 within three business days; and

149 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(g) or
150 (n), within five business days.

151 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(g) or (n),

152 the convicting court shall within three business days forward a copy of the judgment and
153 sentence to the department.

154 (5) An offender in the custody of the department shall be registered by agents of the
155 department upon:

156 (a) placement on probation;

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

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

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

163 (e) termination of probation or parole.

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

167 (a) commitment to the correctional facility; and

168 (b) release from confinement.

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

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

173 (9) An offender convicted by any other jurisdiction is required to register under
174 Subsection (1)(g) or (n) and Subsection (10) and shall register with the department within ten
175 days of entering the state, regardless of the offender's length of stay.

176 (10) (a) Except as provided in Subsections (10)(b), (c), and (d), an offender shall, for
177 the duration of the sentence and for ten years after termination of sentence or custody of the
178 division, register every year during the month of the offender's birth, during the month that is
179 the sixth month after the offender's birth month, and also within three business days of every
180 change of the offender's primary residence, any secondary residences, place of employment,
181 vehicle information, or educational information required to be submitted under Subsection
182 (12).

183 (b) Except as provided Subsections (10)(c) and (d), an offender who is convicted in
184 another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar
185 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

186 (i) register for the time period, and in the frequency, required by the jurisdiction where
187 the offender was convicted if that jurisdiction's registration period or registration frequency
188 requirement for the offense that the offender was convicted of is greater than the ten years from
189 completion of the sentence registration period that is required under Subsection (10)(a), or is
190 more frequent than every six months; or

191 (ii) register in accordance with the requirements of Subsection (10)(a), if the
192 jurisdiction's registration period or frequency requirement for the offense that the offender was
193 convicted of is less than the registration period required under Subsection (10)(a), or is less
194 frequent than every six months.

195 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection
196 (10)(c)(ii) shall, for the offender's lifetime, register every year during the month of the
197 offender's birth, during the month that is the sixth month after the offender's birth month, and
198 also within three business days of every change of the offender's primary residence, any
199 secondary residences, place of employment, vehicle information, or educational information
200 required to be submitted under Subsection (12).

201 (B) This registration requirement is not subject to exemptions and may not be
202 terminated or altered during the offender's lifetime.

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

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

207 (B) a conviction for any of the following offenses, including attempting, soliciting, or
208 conspiring to commit any felony of:

209 (I) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of
210 the victim;

211 (II) Section 76-5-402, rape;

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

213 (IV) Section 76-5-402.2, object rape;

- 214 (V) Section 76-5-402.3, object rape of a child;
- 215 (VI) Section 76-5-403.1, sodomy on a child;
- 216 (VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or
- 217 (VIII) Section 76-5-405, aggravated sexual assault;
- 218 (C) Section 76-4-401, a felony violation of enticing a minor over the Internet;
- 219 (D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
- 220 of the victim;
- 221 (E) Section 76-5-403, forcible sodomy;
- 222 (F) Section 76-5-404.1, sexual abuse of a child; or
- 223 (G) Section 76-5a-3, sexual exploitation of a minor.
- 224 (d) Notwithstanding Subsections (10)(a), (b), and (c), an offender who is confined in a
- 225 secure facility or in a state mental hospital is not required to register during the period of
- 226 confinement.
- 227 (e) An offender who is required to register under this Subsection (10) shall surrender
- 228 the offender's license, certificate, or identification card as required under Subsection
- 229 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
- 230 provided under Section 53-3-205 or 53-3-804.
- 231 (11) An agency in the state that registers an offender on probation, an offender who has
- 232 been released from confinement to parole status or termination, or an offender whose sentence
- 233 has expired shall inform the offender of the duty to comply with:
- 234 (a) the continuing registration requirements of this section during the period of
- 235 registration required in Subsection (10), including:
- 236 (i) notification to the state agencies in the states where the registrant presently resides
- 237 and plans to reside when moving across state lines;
- 238 (ii) verification of address at least every 60 days pursuant to a parole agreement for
- 239 lifetime parolees; and
- 240 (iii) notification to the out-of-state agency where the offender is living, whether or not
- 241 the offender is a resident of that state; and
- 242 (b) the driver license certificate or identification card surrender requirement under
- 243 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
- 244 53-3-804.

- 245 (12) An offender shall provide the department or the registering entity with the
246 following information:
- 247 (a) all names and aliases by which the offender is or has been known;
 - 248 (b) the addresses of the offender's primary and secondary residences;
 - 249 (c) a physical description, including the offender's date of birth, height, weight, eye and
250 hair color;
 - 251 (d) the make, model, color, year, plate number, and vehicle identification number of
252 any vehicle or vehicles the offender owns or regularly drives;
 - 253 (e) a current photograph of the offender;
 - 254 (f) a set of fingerprints, if one has not already been provided;
 - 255 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
256 already been provided;
 - 257 (h) telephone numbers and any other designations used by the offender for routing or
258 self-identification in telephonic communications from fixed locations or cellular telephones;
 - 259 (i) Internet identifiers and the addresses the offender uses for routing or
260 self-identification in Internet communications or postings;
 - 261 (j) the name and Internet address of all websites on which the sex offender is registered
262 using an online identifier, including all online identifiers and passwords used to access those
263 websites;
 - 264 (k) a copy of the offender's passport, if a passport has been issued to the offender;
 - 265 (l) if the offender is an alien, all documents establishing the offender's immigration
266 status;
 - 267 (m) all professional licenses that authorize the offender to engage in an occupation or
268 carry out a trade or business, including any identifiers, such as numbers;
 - 269 (n) each educational institution in Utah at which the offender is employed, carries on a
270 vocation, or is a student, and any change of enrollment or employment status of the offender at
271 any educational institution;
 - 272 (o) the name and the address of any place where the offender is employed or will be
273 employed;
 - 274 (p) the name and the address of any place where the offender works as a volunteer or
275 will work as a volunteer; and

276 (q) the offender's Social Security number.

277 (13) The department shall:

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

279 (i) the crimes the offender has been convicted of or adjudicated delinquent for;

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

281 (iii) any other relevant identifying information as determined by the department;

282 (b) maintain the Sex Offender Notification and Registration website; and

283 (c) ensure that the registration information collected regarding an offender's enrollment

284 or employment at an educational institution is:

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

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

287 education; or

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

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

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

291 (14) (a) An offender who knowingly fails to register under this section or provides false

292 or incomplete information is guilty of:

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

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

295 (A) the offender is required to register for a felony conviction or adjudicated delinquent

296 for what would be a felony if the juvenile were an adult of an offense listed in Subsection

297 (1)(g)(i) or (n)(i); or

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

299 (10)(c); or

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

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

302 register for a misdemeanor conviction or is adjudicated delinquent for what would be a

303 misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).

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

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

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

307 (c) The offender shall register for an additional year for every year in which the
308 offender does not comply with the registration requirements of this section.

309 (15) Notwithstanding Title 63G, Chapter 2, Government Records Access and
310 Management Act, information in Subsection (13) collected and released under Subsection (25)
311 is public information.

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

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

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

322 (18) Notwithstanding Section 42-1-1, an offender:

323 (a) may not change the offender's name:

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

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

326 (b) may not change the offender's name at any time, if registration is for life under
327 Subsection (10)(c).

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

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

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

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

334 (21) This section does not create or impose any duty on any person to request or obtain
335 information regarding any sex offender from the department.

336 (22) The department shall maintain a Sex Offender Notification and Registration
337 website on the Internet, which shall contain a disclaimer informing the public:

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

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

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

344 (23) The Sex Offender Notification and Registration website shall be indexed by both
345 the surname of the offender and by postal codes.

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

349 (25) The Sex Offender Notification and Registration website shall include the
350 following registry information:

351 (a) all names and aliases by which the offender is or has been known;

352 (b) the addresses of the offender's primary, secondary, and temporary residences;

353 (c) a physical description, including the offender's date of birth, height, weight, and eye
354 and hair color;

355 (d) the make, model, color, year, and plate number of any vehicle or vehicles the
356 offender owns or regularly drives;

357 (e) a current photograph of the offender;

358 (f) a list of all professional licenses that authorize the offender to engage in an
359 occupation or carry out a trade or business;

360 (g) each educational institution in Utah at which the offender is employed, carries on a
361 vocation, or is a student;

362 (h) a list of places where the offender works as a volunteer;

363 (i) the crimes listed in Subsections (1)(g) and (1)(n) that the offender has been
364 convicted of or for which the offender has been adjudicated delinquent in juvenile court; and

365 (j) a description of the offender's primary and secondary targets.

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

369 information.

370 (27) The department shall redact information that, if disclosed, could reasonably
371 identify a victim.

372 (28) (a) Each offender required to register under Subsection (10) shall, in the month of
373 the offender's birth, pay to the department an annual fee of \$100 each year the offender is
374 subject to the registration requirements of this section.

375 (b) Notwithstanding Subsection (28)(a), an offender who is confined in a secure facility
376 or in a state mental hospital is not required to pay the annual fee.

377 (c) The department shall deposit fees under this Subsection (28) in the General Fund as
378 a dedicated credit, to be used by the department for maintaining the offender registry under this
379 section and monitoring offender registration compliance, including the costs of:

380 (i) data entry;

381 (ii) processing registration packets;

382 (iii) updating registry information;

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

384 and

385 (v) apprehending offenders who are in violation of the offender registration
386 requirements under this section.

387 (29) Notwithstanding Subsections (2)(c) and (12)(i) and (j), a sex offender is not
388 required to provide the department with:

389 (a) the offender's online identifier and password used exclusively for the offender's
390 employment on equipment provided by an employer and used to access the employer's private
391 network; or

392 (b) online identifiers for the offender's financial accounts, including any bank,
393 retirement, or investment accounts.

Legislative Review Note
as of 12-17-08 8:36 AM

Office of Legislative Research and General Counsel

H.B. 136 - Sex Offender Definition Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
