

1 **DEPARTMENT OF CORRECTIONS REGISTRY AMENDMENTS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Douglas C. Aagard**

5 Senate Sponsor: Jon J. Greiner

6

7 **LONG TITLE**

8 **General Description:**

9 This bill clarifies the definition of secondary residence, clarifies that the Department of
10 Corrections is to assist in investigating kidnapping crimes, and makes technical
11 corrections.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ clarifies that a secondary residence may include any location that the offender does
- 15 not own, or does not have a financial interest in, if the offender has stayed at that
- 16 location for a specified period of time;
- 17 ▶ clarifies that the Department of Corrections is to assist in investigating kidnapping
- 18 crimes; and
- 19 ▶ makes technical corrections.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **77-27-21.5**, as last amended by Laws of Utah 2009, Chapters 117, 126, 249, and 354



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

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

30 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**
31 **Law enforcement and courts to report -- Penalty -- Effect of expungement.**

32 (1) As used in this section:

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

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

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

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

39 (e) "Indian Country" means:

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

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

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

48 (f) "Jurisdiction" means any state, Indian Country, or United States Territory.

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

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

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

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

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

54 (D) attempting, soliciting, or conspiring to commit any felony offense listed in
55 Subsections (1)(g)(i)(A) through (C);

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

- 59 (A) a Utah resident; or
- 60 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
61 10 or more days, regardless of whether or not the offender intends to permanently reside in this
62 state;
- 63 (iii) is required to register as an offender in any other jurisdiction, and who, in any 12
64 month period, is in this state for a total of 10 or more days, regardless of whether or not the
65 offender intends to permanently reside in this state;
- 66 (iv) is a nonresident regularly employed or working in this state, or who is a student in
67 this state, and was convicted of one or more offenses listed in Subsection (1)(g), or any
68 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
69 required to register in the person's state of residence;
- 70 (v) is found not guilty by reason of insanity in this state or in any other jurisdiction of
71 one or more offenses listed in Subsection (1)(g); or
- 72 (vi) is adjudicated delinquent based on one or more offenses listed in Subsection
73 (1)(g)(i) and who has been committed to the division for secure confinement and remains in the
74 division's custody 30 days prior to the person's 21st birthday.
- 75 (h) "Natural parent" means a minor's biological or adoptive parent, and includes the
76 minor's noncustodial parent.
- 77 (i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex
78 offender as defined in Subsection (1)(n).
- 79 (j) "Online identifier" or "Internet identifier":
80 (i) means any electronic mail, chat, instant messenger, social networking, or similar
81 name used for Internet communication; and
82 (ii) does not include date of birth, Social Security number, PIN number, or Internet
83 passwords.
- 84 (k) "Primary residence" means the location where the offender regularly resides, even
85 if the offender intends to move to another location or return to another location at any future
86 date.
- 87 (l) "Register" means to comply with the requirements of this section and administrative
88 rules of the department made under this section.
- 89 (m) "Secondary residence" means any real property that the offender owns or has a

90 financial interest in, [~~and~~] or any location where, in any 12 month period, the offender stays
91 overnight a total of 10 or more nights when not staying at the offender's primary residence.

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

93 (i) convicted in this state of:

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

95 (B) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (Q) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense
111 four or more times;

112 (R) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the
113 offense four or more times;

114 (S) any combination of convictions of Subsection 76-9-702(1), lewdness, and of
115 Subsection 76-9-702(3), sexual battery, that total four or more convictions;

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

117 (U) Section 76-10-1306, aggravated exploitation of prostitution; or

118 (V) attempting, soliciting, or conspiring to commit any felony offense listed in
119 Subsection (1)(n)(i);

120 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to

121 commit a crime in another jurisdiction that is substantially equivalent to the offenses listed in
122 Subsection (1)(n)(i) and who is:

123 (A) a Utah resident; or

124 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
125 10 or more days, regardless of whether the offender intends to permanently reside in this state;

126 (iii) who is required to register as an offender in any other jurisdiction, and who, in any
127 12 month period, is in the state for a total of 10 or more days, regardless of whether or not the
128 offender intends to permanently reside in this state;

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

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

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

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

140 (2) The department, to assist in investigating kidnapping and sex-related crimes, and in
141 apprehending offenders, shall:

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

144 (b) make information listed in Subsection (27) available to the public; and

145 (c) share information provided by an offender under this section that may not be made
146 available to the public under Subsection (27), but only:

147 (i) for the purposes under this Subsection (2); or

148 (ii) in accordance with Section 63G-2-206.

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

151 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(g) or (n),

152 within three business days; and

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

155 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(g) or (n),
156 the convicting court shall within three business days forward a copy of the judgment and
157 sentence to the department.

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

160 (a) placement on probation;

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

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

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

167 (e) termination of probation or parole.

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

171 (a) commitment to the correctional facility; and

172 (b) release from confinement.

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

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

177 (9) (a) (i) A municipal or county law enforcement agency shall register an offender
178 who resides within the agency's jurisdiction and is not under the supervision of the Division of
179 Adult Probation and Parole within the department.

180 (ii) In order to conduct offender registration under this section, the agency shall ensure
181 the agency staff responsible for registration:

182 (A) has received initial training by the department and has been certified by the

183 department as qualified and authorized to conduct registrations and enter offender registration
184 information into the registry database; and

185 (B) certify annually with the department.

186 (b) (i) When the department receives offender registration information regarding a
187 change of an offender's primary residence location, the department shall within five days
188 electronically notify the law enforcement agencies that have jurisdiction over the area where:

189 (A) the residence that the offender is leaving is located; and

190 (B) the residence to which the offender is moving is located.

191 (ii) The department shall provide notification under this Subsection (9)(b) if the
192 offender's change of address is between law enforcement agency jurisdictions, or is within one
193 jurisdiction.

194 (c) The department shall make available to offenders required to register under this
195 section the name of the agency, whether it is a local law enforcement agency or the department,
196 that the offender should contact to register, the location for registering, and the requirements of
197 registration.

198 (10) An offender convicted by any other jurisdiction is required to register under
199 Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10
200 days of entering the state, regardless of the offender's length of stay.

201 (11) (a) An offender required to register under Subsection (1)(g) or (n) who is under
202 supervision by the department shall register with Division of Adult Probation and Parole.

203 (b) An offender required to register under Subsection (1)(g) or (n) who is no longer
204 under supervision by the department shall register with the police department or sheriff's office
205 that has jurisdiction over the area where the offender resides.

206 (12) (a) Except as provided in Subsections (12)(b), (c), and (d), an offender shall, for
207 the duration of the sentence and for 10 years after termination of sentence or custody of the
208 division, register every year during the month of the offender's birth, during the month that is
209 the sixth month after the offender's birth month, and also within three business days of every
210 change of the offender's primary residence, any secondary residences, place of employment,
211 vehicle information, or educational information required to be submitted under Subsection
212 (14).

213 (b) Except as provided Subsections (12)(c) and (d), an offender who is convicted in

214 another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar
215 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

216 (i) register for the time period, and in the frequency, required by the jurisdiction where
217 the offender was convicted if that jurisdiction's registration period or registration frequency
218 requirement for the offense that the offender was convicted of is greater than the 10 years from
219 completion of the sentence registration period that is required under Subsection (12)(a), or is
220 more frequent than every six months; or

221 (ii) register in accordance with the requirements of Subsection (12)(a), if the
222 jurisdiction's registration period or frequency requirement for the offense that the offender was
223 convicted of is less than the registration period required under Subsection (12)(a), or is less
224 frequent than every six months.

225 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection
226 (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the
227 offender's birth, during the month that is the sixth month after the offender's birth month, and
228 also within three business days of every change of the offender's primary residence, any
229 secondary residences, place of employment, vehicle information, or educational information
230 required to be submitted under Subsection (14).

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

233 (ii) Offenses referred to in Subsection (12)(c)(i) are:

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

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

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

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

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

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

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

- 245 (VI) Section 76-5-403.1, sodomy on a child;
- 246 (VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or
- 247 (VIII) Section 76-5-405, aggravated sexual assault;
- 248 (C) Section 76-4-401, a felony violation of enticing a minor over the Internet;
- 249 (D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
- 250 of the victim;
- 251 (E) Section 76-5-403, forcible sodomy;
- 252 (F) Section 76-5-404.1, sexual abuse of a child; or
- 253 (G) Section 76-5a-3, sexual exploitation of a minor.
- 254 (d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a
- 255 secure facility or in a state mental hospital is not required to register during the period of
- 256 confinement.
- 257 (e) An offender who is required to register under this Subsection (12) shall surrender
- 258 the offender's license, certificate, or identification card as required under Subsection
- 259 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
- 260 provided under Section 53-3-205 or 53-3-804.
- 261 (f) A sex offender who violates Section 77-27-21.8 while required to register under this
- 262 section shall register for an additional five years subsequent to the registration period otherwise
- 263 required under this section.
- 264 (13) An agency in the state that registers an offender on probation, an offender who has
- 265 been released from confinement to parole status or termination, or an offender whose sentence
- 266 has expired shall inform the offender of the duty to comply with:
- 267 (a) the continuing registration requirements of this section during the period of
- 268 registration required in Subsection (12), including:
- 269 (i) notification to the state agencies in the states where the registrant presently resides
- 270 and plans to reside when moving across state lines;
- 271 (ii) verification of address at least every 60 days pursuant to a parole agreement for
- 272 lifetime parolees; and
- 273 (iii) notification to the out-of-state agency where the offender is living, whether or not
- 274 the offender is a resident of that state; and
- 275 (b) the driver license certificate or identification card surrender requirement under

276 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
277 53-3-804.

278 (14) An offender shall provide the department or the registering entity with the
279 following information:

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

281 (b) the addresses of the offender's primary and secondary residences;

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

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

286 (e) a current photograph of the offender;

287 (f) a set of fingerprints, if one has not already been provided;

288 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
289 already been provided;

290 (h) telephone numbers and any other designations used by the offender for routing or
291 self-identification in telephonic communications from fixed locations or cellular telephones;

292 (i) Internet identifiers and the addresses the offender uses for routing or
293 self-identification in Internet communications or postings;

294 (j) the name and Internet address of all websites on which the ~~H~~→ [sex] ←~~H~~ offender is
294a registered

295 using an online identifier, including all online identifiers used to access those websites;

296 (k) a copy of the offender's passport, if a passport has been issued to the offender;

297 (l) if the offender is an alien, all documents establishing the offender's immigration
298 status;

299 (m) all professional licenses that authorize the offender to engage in an occupation or
300 carry out a trade or business, including any identifiers, such as numbers;

301 (n) each educational institution in Utah at which the offender is employed, carries on a
302 vocation, or is a student, and any change of enrollment or employment status of the offender at
303 any educational institution;

304 (o) the name and the address of any place where the offender is employed or will be
305 employed;

306 (p) the name and the address of any place where the offender works as a volunteer or

307 will work as a volunteer; and

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

309 (15) The department shall:

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

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

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

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

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

315 (c) ensure that the registration information collected regarding an offender's enrollment
316 or employment at an educational institution is:

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

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

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

323 (16) (a) An offender who knowingly fails to register under this section or provides
324 false or incomplete information is guilty of:

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

327 (A) the offender is required to register for a felony conviction or adjudicated delinquent
328 for what would be a felony if the juvenile were an adult of an offense listed in Subsection
329 (1)(g)(i) or (n)(i); or

330 (B) the offender is required to register for the offender's lifetime under Subsection
331 (12)(c); or

332 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
333 not fewer than 90 days and also at least one year of probation if the offender is required to
334 register for a misdemeanor conviction or is adjudicated delinquent for what would be a
335 misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).

336 (b) Neither the court nor the Board of Pardons and Parole may release a person who
337 violates this section from serving the term required under Subsection (16)(a). This Subsection

338 (16)(b) supersedes any other provision of the law contrary to this section.

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

341 (17) Notwithstanding Title 63G, Chapter 2, Government Records Access and
342 Management Act, information under Subsection (15) that is collected and released under
343 Subsection (27) is public information, unless otherwise restricted under Subsection (2)(c).

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

349 (b) This Subsection (18) does not apply to any person temporarily released under guard
350 from the institution in which the person is confined.

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

354 (20) Notwithstanding Section 42-1-1, an offender:

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

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

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

358 (b) may not change the offender's name at any time, if registration is for life under
359 Subsection (12)(c).

360 (21) The department may make administrative rules necessary to implement this
361 section, including:

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

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

364 (22) Any information regarding the identity or location of a victim shall be redacted by
365 the department from information provided under Subsections (14) and (15).

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

368 (24) The department shall maintain a Sex Offender Notification and Registration

369 website on the Internet, which shall contain a disclaimer informing the public:

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

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

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

376 (25) The Sex Offender Notification and Registration website shall be indexed by both
377 the surname of the offender and by postal codes.

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

381 (27) The Sex Offender Notification and Registration website shall include the
382 following registry information:

383 (a) all names and aliases by which the offender is or has been known, but not including
384 any online or Internet identifiers;

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

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

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

390 (e) a current photograph of the offender;

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

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

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

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

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

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

402 (29) The department shall redact information that, if disclosed, could reasonably
403 identify a victim.

404 (30) (a) Each offender required to register under Subsection (12) shall, in the month of
405 the offender's birth, pay to the department an annual fee of \$100 each year the offender is
406 subject to the registration requirements of this section.

407 (b) Notwithstanding Subsection (30)(a), an offender who is confined in a secure facility
408 or in a state mental hospital is not required to pay the annual fee.

409 (c) The department shall deposit fees under this Subsection (30) in the General Fund as
410 a dedicated credit, to be used by the department for maintaining the offender registry under this
411 section and monitoring offender registration compliance, including the costs of:

412 (i) data entry;

413 (ii) processing registration packets;

414 (iii) updating registry information;

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

416 and

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

419 (31) Notwithstanding Subsections (2)(c) and (14)(i) and (j), a sex offender is not
420 required to provide the department with:

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

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

Legislative Review Note
as of 2-17-10 10:20 AM

Office of Legislative Research and General Counsel

H.B. 365 - Department of Corrections Registry Amendments

Fiscal Note

2010 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.
