

SEX OFFENDER REGULATION AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: Patricia W. Jones

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure regarding the annual fee paid by registered sex offenders.

Highlighted Provisions:

This bill:

- ▶ provides that in addition to the annual fee of \$100 that registered sex offenders are currently required to pay to the Department of Corrections, a fee of not more than \$25 may be assessed by the agency other than the Department of Corrections, that registers the 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 2009, Chapters 117, 126, 249, and 354

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

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

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

(1) As used in this section:

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

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

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

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

36 (e) "Indian Country" means:

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

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

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

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

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

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

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

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

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

51 (D) attempting, soliciting, or conspiring to commit any felony offense listed in

52 Subsections (1)(g)(i)(A) through (C);

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

56 (A) a Utah resident; or

57 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of

58 10 or more days, regardless of whether or not the offender intends to permanently reside in this
59 state;

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

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

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

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

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

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

76 (j) "Online identifier" or "Internet identifier":

77 (i) means any electronic mail, chat, instant messenger, social networking, or similar
78 name used for Internet communication; and

79 (ii) does not include date of birth, Social Security number, PIN number, or Internet
80 passwords.

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
85 administrative 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 10 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 four or more times;

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

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

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

- 114 (U) Section 76-10-1306, aggravated exploitation of prostitution; or
115 (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 10 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
124 any 12 month period, is in the state for a total of 10 or more days, regardless of whether or not
125 the 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),
128 or 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
134 the 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 (27) available to the public; and

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

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

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

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

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

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

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

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

157 (a) placement on probation;

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

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

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

164 (e) termination of probation or parole.

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

168 (a) commitment to the correctional facility; and

169 (b) release from confinement.

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

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

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

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

179 (A) has received initial training by the department and has been certified by the
180 department as qualified and authorized to conduct registrations and enter offender registration
181 information into the registry database; and

182 (B) certify annually with the department.

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

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

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

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

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

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

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

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

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

210 (b) Except as provided Subsections (12)(c) and (d), an offender who is convicted in
211 another jurisdiction of an offense listed in Subsection (1)(g)(i) or (n)(i), a substantially similar
212 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

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

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

222 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection
223 (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the
224 offender's birth, during the month that is the sixth month after the offender's birth month, and
225 also within three business days of every change of the offender's primary residence, any

226 secondary residences, place of employment, vehicle information, or educational information
227 required to be submitted under Subsection (14).

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

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

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

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

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

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

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

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

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

242 (VI) Section 76-5-403.1, sodomy on a child;

243 (VII) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

244 (VIII) Section 76-5-405, aggravated sexual assault;

245 (C) Section 76-4-401, a felony violation of enticing a minor over the Internet;

246 (D) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent
247 of the victim;

248 (E) Section 76-5-403, forcible sodomy;

249 (F) Section 76-5-404.1, sexual abuse of a child; or

250 (G) Section 76-5a-3, sexual exploitation of a minor.

251 (d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a
252 secure facility or in a state mental hospital is not required to register during the period of
253 confinement.

254 (e) An offender who is required to register under this Subsection (12) shall surrender
255 the offender's license, certificate, or identification card as required under Subsection
256 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
257 provided under Section 53-3-205 or 53-3-804.

258 (f) A sex offender who violates Section 77-27-21.8 while required to register under
259 this section shall register for an additional five years subsequent to the registration period
260 otherwise required under this section.

261 (13) An agency in the state that registers an offender on probation, an offender who
262 has been released from confinement to parole status or termination, or an offender whose
263 sentence has expired shall inform the offender of the duty to comply with:

264 (a) the continuing registration requirements of this section during the period of
265 registration required in Subsection (12), including:

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

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

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

272 (b) the driver license certificate or identification card surrender requirement under
273 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
274 53-3-804.

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

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

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

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

281 (d) the make, model, color, year, plate number, and vehicle identification number of

- 282 any vehicle or vehicles the offender owns or regularly drives;
- 283 (e) a current photograph of the offender;
- 284 (f) a set of fingerprints, if one has not already been provided;
- 285 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
286 already been provided;
- 287 (h) telephone numbers and any other designations used by the offender for routing or
288 self-identification in telephonic communications from fixed locations or cellular telephones;
- 289 (i) Internet identifiers and the addresses the offender uses for routing or
290 self-identification in Internet communications or postings;
- 291 (j) the name and Internet address of all websites on which the sex offender is
292 registered using an online identifier, including all online identifiers used to access those
293 websites;
- 294 (k) a copy of the offender's passport, if a passport has been issued to the offender;
- 295 (l) if the offender is an alien, all documents establishing the offender's immigration
296 status;
- 297 (m) all professional licenses that authorize the offender to engage in an occupation or
298 carry out a trade or business, including any identifiers, such as numbers;
- 299 (n) each educational institution in Utah at which the offender is employed, carries on a
300 vocation, or is a student, and any change of enrollment or employment status of the offender at
301 any educational institution;
- 302 (o) the name and the address of any place where the offender is employed or will be
303 employed;
- 304 (p) the name and the address of any place where the offender works as a volunteer or
305 will work as a volunteer; and
- 306 (q) the offender's Social Security number.
- 307 (15) The department shall:
- 308 (a) provide the following additional information when available:
- 309 (i) the crimes the offender has been convicted of or adjudicated delinquent for;

310 (ii) a description of the offender's primary and secondary targets; and
311 (iii) any other relevant identifying information as determined by the department;

312 (b) maintain the Sex Offender Notification and Registration website; and
313 (c) ensure that the registration information collected regarding an offender's
314 enrollment or employment at an educational institution is:

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

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

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

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

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

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

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

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

334 (b) Neither the court nor the Board of Pardons and Parole may release a person who
335 violates this section from serving the term required under Subsection (16)(a). This Subsection
336 (16)(b) supersedes any other provision of the law contrary to this section.

337 (c) The offender shall register for an additional year for every year in which the

338 offender does not comply with the registration requirements of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

366 (24) The department shall maintain a Sex Offender Notification and Registration
367 website on the Internet, which shall contain a disclaimer informing the public:

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

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

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

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

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

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

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

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

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

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

388 (e) a current photograph of the offender;

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

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

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

394 (i) the crimes listed in Subsections (1)(g) and [~~(h)~~] (n) that the offender has been
395 convicted of or for which the offender has been adjudicated delinquent in juvenile court.

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

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

402 (30) (a) Each offender required to register under Subsection (12) shall, in the month of
403 the offender's birth[-];

404 (i) pay to the department an annual fee of \$100 each year the offender is subject to the
405 registration requirements of this section[-]; and

406 (ii) pay to the registering agency, if it is an agency other than the Department of
407 Corrections, an annual fee of not more than \$25, which may be assessed by that agency for
408 providing registration.

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

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

414 (i) data entry;

415 (ii) processing registration packets;

416 (iii) updating registry information;

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

418 and

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

421 (31) Notwithstanding Subsections (2)(c) and (14)(i) and (j), a sex offender is not

422 required to provide the department with:

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

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