

**SEX OFFENDER REGISTRY AMENDMENT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Jon J. Greiner

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**LONG TITLE**

**General Description:**

This bill modifies provisions regarding the state sex offender registry.

**Highlighted Provisions:**

This bill:

- ▶ amends the definitions applicable to the sex offender registry provisions to include in the definition of conviction those convictions obtained under any state, federal, or military court; and
- ▶ makes technical corrections.

**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

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*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:

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

- 30 (b) "Department" means the Department of Corrections.
- 31 (c) "Division" means the Division of Juvenile Justice Services.
- 32 (d) "Employed" or "carries on a vocation" includes employment that is full time or  
33 part time, whether financially compensated, volunteered, or for the purpose of government or  
34 educational benefit.
- 35 (e) "Indian Country" means:
- 36 (i) all land within the limits of any Indian reservation under the jurisdiction of the  
37 United States government, regardless of the issuance of any patent, and includes rights-of-way  
38 running through the reservation;
- 39 (ii) all dependent Indian communities within the borders of the United States whether  
40 within the original or subsequently acquired territory, and whether or not within the limits of a  
41 state; and
- 42 (iii) all Indian allotments, including the Indian allotments to which the Indian titles to  
43 have not been extinguished, including rights-of-way running through the allotments.
- 44 (f) "Jurisdiction" means any state, Indian Country, [or] United States Territory, or any  
45 property under the jurisdiction of the United States military.
- 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, including any state, federal, or military court that is  
55 substantially equivalent to the offenses listed in 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) (A) is required to register as an offender in any other jurisdiction, or who is  
61 required to register as an offender by any state, federal, or military court; and [~~who;~~]

62 (B) in any 12 month period, is in this state for a total of 10 or more days, regardless of  
63 whether or not the offender intends to permanently reside in this state;

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

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

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

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

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

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

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

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

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

85 (l) "Register" means to comply with the requirements of this section and

86 administrative rules of the department made under this section.

87 (m) "Secondary residence" means any real property that the offender owns or has a  
88 financial interest in, and any location where, in any 12 month period, the offender stays  
89 overnight a total of 10 or more nights when not staying at the offender's primary residence.

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

91 (i) convicted in this state of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 114 (T) Section 76-9-702.5, lewdness involving a child;
- 115 (U) Section 76-10-1306, aggravated exploitation of prostitution; or
- 116 (V) attempting, soliciting, or conspiring to commit any felony offense listed in
- 117 Subsection (1)(n)(i);
- 118 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 119 commit a crime in another jurisdiction, including any state, federal, or military court that is
- 120 substantially equivalent to the offenses listed in Subsection (1)(n)(i) and who is:
- 121 (A) a Utah resident; or
- 122 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
- 123 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 124 (iii) (A) who is required to register as an offender in any other jurisdiction, or who is
- 125 required to register as an offender by any state, federal, or military court; and ~~[who;~~
- 126 (B) who, in any 12 month period, is in the state for a total of 10 or more days,
- 127 regardless of whether or not the offender intends to permanently reside in this state;
- 128 (iv) who is a nonresident regularly employed or working in this state or who is a
- 129 student in this state and was convicted of one or more offenses listed in Subsection (1)(n)(i),
- 130 or any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is
- 131 required to register in the person's jurisdiction of residence;
- 132 (v) who is found not guilty by reason of insanity in this state, or in any other
- 133 jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or
- 134 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
- 135 (1)(n)(i) and who has been committed to the division for secure confinement and remains in
- 136 the division's custody 30 days prior to the person's 21st birthday.
- 137 (o) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in
- 138 any jurisdiction.
- 139 (2) The department, to assist in investigating sex-related crimes and in apprehending
- 140 offenders, shall:
- 141 (a) develop and operate a system to collect, analyze, maintain, and disseminate

142 information on offenders and sex and kidnap offenses;

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

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

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

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

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

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

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

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

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

159 (a) placement on probation;

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

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

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

166 (e) termination of probation or parole.

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

170 (a) commitment to the correctional facility; and

171 (b) release from confinement.

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

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

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

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

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

184 (B) certify annually with the department.

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

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

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

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

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

197 (10) An offender convicted by any other jurisdiction is required to register under

198 Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10  
199 days of entering the state, regardless of the offender's length of stay.

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

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

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

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

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

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

224 (c) (i) (A) An offender convicted as an adult of any of the offenses listed in Subsection  
225 (12)(c)(ii) shall, for the offender's lifetime, register every year during the month of the

226 offender's birth, during the month that is the sixth month after the offender's birth month, and  
227 also within three business days of every change of the offender's primary residence, any  
228 secondary residences, place of employment, vehicle information, or educational information  
229 required to be submitted under Subsection (14).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

253 (d) Notwithstanding Subsections (12)(a), (b), and (c), an offender who is confined in a

254 secure facility or in a state mental hospital is not required to register during the period of  
255 confinement.

256 (e) An offender who is required to register under this Subsection (12) shall surrender  
257 the offender's license, certificate, or identification card as required under Subsection  
258 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as  
259 provided under Section 53-3-205 or 53-3-804.

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

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

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

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

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

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

274 (b) the driver license certificate or identification card surrender requirement under  
275 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or  
276 53-3-804.

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

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

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

281 (c) a physical description, including the offender's date of birth, height, weight, eye

282 and hair color;

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

285 (e) a current photograph of the offender;

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

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

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

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

293 (j) the name and Internet address of all websites on which the sex offender is  
294 registered using an online identifier, including all online identifiers used to access those  
295 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
- 316 enrollment 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
- 328 delinquent for what would be a felony if the juvenile were an adult of an offense listed in
- 329 Subsection (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  
350 guard 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  
365 by 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  
367 obtain 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  
371 department 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  
375 and 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  
384 including 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  
387 eye 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  
400 faith compliance with this section and will be presumed to have acted in good faith by  
401 reporting 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  
408 facility 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  
410 as a dedicated credit, to be used by the department for maintaining the offender registry under  
411 this 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~~] an 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.