

**KIDNAPPING AND SEX OFFENDER**

**REGISTRY AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ron Bigelow**

Senate Sponsor: Karen Mayne

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**LONG TITLE**

**General Description:**

This bill requires the department to separate kidnapping and sex offenses on the registry.

**Highlighted Provisions:**

This bill:

- ▶ removes certain acts of simple kidnapping from the list of offenses for the registry;
- and
- ▶ makes technical changes.

**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:

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, Subsection (1)(c) or (d), 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 and Kidnap Offender Notification and Registration  
313 website; and  
314 (c) ensure that the registration information collected regarding an offender's  
315 enrollment or employment at an educational institution is:  
316 (i) (A) promptly made available to any law enforcement agency that has jurisdiction  
317 where the institution is located if the educational institution is an institution of higher  
318 education; or  
319 (B) promptly made available to the district superintendent of the school district where  
320 the offender is enrolled if the educational institution is an institution of primary education; and  
321 (ii) entered into the appropriate state records or data system.  
322 (16) (a) An offender who knowingly fails to register under this section or provides  
323 false or incomplete information is guilty of:  
324 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not  
325 less than 90 days and also at least one year of probation if:  
326 (A) the offender is required to register for a felony conviction or adjudicated  
327 delinquent for what would be a felony if the juvenile were an adult of an offense listed in  
328 Subsection (1)(g)(i) or (n)(i); or  
329 (B) the offender is required to register for the offender's lifetime under Subsection  
330 (12)(c); or  
331 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for  
332 not fewer than 90 days and also at least one year of probation if the offender is required to  
333 register for a misdemeanor conviction or is adjudicated delinquent for what would be a  
334 misdemeanor if the juvenile were an adult of an offense listed in Subsection (1)(g)(i) or (n)(i).  
335 (b) Neither the court nor the Board of Pardons and Parole may release a person who  
336 violates this section from serving the term required under Subsection (16)(a). This Subsection  
337 (16)(b) supersedes any other provision of the law contrary to this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

365 (23) This section does not create or impose any duty on any person to request or

366 obtain information regarding any sex offender from the department.

367 (24) The department shall maintain a Sex Offender and Kidnap Offender Notification  
368 and Registration website on the Internet, which shall contain a disclaimer informing the  
369 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 and Kidnap Offender Notification and Registration website  
377 shall be indexed by both 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 and Kidnap Offender Notification and Registration website  
382 shall include the 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 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.