

SEX OFFENDER REGISTRY AMENDMENT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Jon J. Greiner

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

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.



- 28 (1) As used in this section:
- 29 (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 part
- 33 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) who, in any 12 month period, is in this state for a total of 10 or more days,
63 regardless of 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 the
72 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 administrative
86 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), or
130 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 the
136 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 with
169 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 department,
195 that the offender should contact to register, the location for registering, and the requirements of
196 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 this
- 261 section shall register for an additional five years subsequent to the registration period otherwise
- 262 required under this section.
- 263 (13) An agency in the state that registers an offender on probation, an offender who has
- 264 been released from confinement to parole status or termination, or an offender whose sentence
- 265 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 and
282 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 registered
294 using an online identifier, including all online identifiers used to access those websites;

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

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

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

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

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

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

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

308 (15) The department shall:

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

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

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

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

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

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

315 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 delinquent

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

328 (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 guard
349 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 by
364 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 obtain
366 information regarding any [~~sex~~] offender from the department.

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

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

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

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

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

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

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

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

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

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

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

389 (e) a current photograph of the offender;

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

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

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

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

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

400 information.

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

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

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

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

411 (i) data entry;

412 (ii) processing registration packets;

413 (iii) updating registry information;

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

415 and

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

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel