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H.B. 389
1st Sub. (Buff)

Representative Jack R. Draxler proposes the following substitute bill:

OFFENDER REGISTRY REVIEW

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows a person on the Sex Offender and Kidnap Offender Registry to petition the court for removal after five years for certain offenses.

Highlighted Provisions:

This bill:

- allows a person who has been convicted of the following to petition the court for removal from the Sex Offender and Kidnap Offender Registry after five years:
  - unlawful sexual conduct with a 16 or 17 year old;
  - unlawful sexual activity with a minor; or
  - voyeurism;
- sets a fee for filing the petition;
- requires that the person have successfully completed any court-ordered treatment and not have any subsequent convictions;
- requires that a copy of the petition be delivered to the prosecutor and victim; and
- gives the court discretion to order the person removed if it determines that the person is no longer a risk to society.

Money 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 2010, Chapters 55, 120, 144, 283, and 328

78A-2-301, as last amended by Laws of Utah 2010, Chapters 278 and 283

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.

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

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

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

(e) "Indian Country" means:

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

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

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

(f) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States military.

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

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

(A) Section 76-5-301, Subsection (1)(c) or (d), kidnapping;

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

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

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

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

(A) a Utah resident; or

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

(iii) (A) is required to register as an offender in any other jurisdiction, or who is required to register as an offender by any state, federal, or military court; and

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

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

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

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

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

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

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

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

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

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

(l) "Register" means to comply with the requirements of this section and administrative rules of the department made under this section.

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

(n) "Sex offender" means any person:

(i) convicted in this state of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Q) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense

four or more times;

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

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

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

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

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

(ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (1)(n)(i) and who is:

(A) a Utah resident; or

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

(iii) (A) who is required to register as an offender in any other jurisdiction, or who is required to register as an offender by any state, federal, or military court; and

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

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

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

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

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

(2) The department, to assist in investigating kidnapping and sex-related crimes, and in

apprehending offenders, shall:

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

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

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

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

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

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

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

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

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

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

(a) placement on probation;

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

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

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

(e) termination of probation or parole.

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

(a) commitment to the correctional facility; and

(b) release from confinement.

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

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

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

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

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

(B) certify annually with the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) An agency in the state that registers an offender on probation, an offender who has

been released from confinement to parole status or termination, or an offender whose sentence has expired shall inform the offender of the duty to comply with:

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

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

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

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

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

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

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

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

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

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

(e) a current photograph of the offender;

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

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

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

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

(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;

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

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

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

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

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

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

(q) the offender's Social Security number.

(15) The department shall:

(a) provide the following additional information when available:

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

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

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

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

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

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

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

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

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

(i) a third degree felony and shall be sentenced to serve a term of incarceration for not

less than 90 days and also at least one year of probation if:

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

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

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

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

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

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

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

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

(19) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted of any offense listed in Subsection (1)(g) or (n) is not relieved from the responsibility to register as required under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) a current photograph of the offender;

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

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

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

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

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

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

(30) (a) Each offender required to register under Subsection (12) shall, in the month of the offender's birth:

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

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

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

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

(i) data entry;

(ii) processing registration packets;

(iii) updating registry information;

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

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

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

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

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

(32) An offender may petition the court of conviction for the offense requiring registration for an order removing the offender from the Sex Offender and Kidnap Offender Registry if:

(a) the offender was convicted of:

(i) Section 76-5-40, unlawful sexual activity with a minor;

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

(iii) Section 76-9-702.7, voyeurism;

(b) five years have passed since the completion of the offender's sentence;

(c) the offender has successfully completed all court-ordered treatment;

(d) the offender has not been convicted of a crime, excluding traffic offenses;

(e) the offender has complied with all the registration requirements of this section; and

(f) the office that prosecuted the offender, and the victim, are notified and provided with an opportunity to respond in accordance with Subsection (33).

(33) (a) The offender shall file a petition with the court and pay the fee required by Section 78A-2-301.

(b) The offender shall deliver a copy of the filed petition to the office of the prosecuting attorney.

(i) Upon receipt of a petition for removal from the Sex Offender and Kidnap Offender Registry, the prosecuting attorney shall provide notice of the petition by first-class mail to the victim at the most recent address of record on file.

(ii) The notice shall include a copy of the petition, state that the victim has a right to object to the removal, and provide instructions for registering an objection with the court.

(c) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within 30 days after receipt of the petition.

(34) The court shall review all documents submitted with the petition and may hold a hearing. If the court determines that it is in the interests of justice to do so, it may grant the petition and order removal. If the court grants the petition, it shall forward a copy of the order to the department.

Section 2. Section **78A-2-301** is amended to read:

78A-2-301. Civil fees of the courts of record -- Courts complex design.

(1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a court of record not governed by another subsection is $360.

(b) The fee for filing a complaint or petition is:

(i) $75 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $360 if the claim for damages or amount in interpleader is $10,000 or more;

(iv) $310 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance; [~~and~~]

(v) $35 for a motion for temporary separation order filed under Section 30-3-4.5[~~.~~]; and

(vi) $125 if the petition is for removal from the Sex Offender and Kidnap Offender Registry under Subsection 77-27-21.5(32).

(c) The fee for filing a small claims affidavit is:

(i) $60 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $100 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $185 if the claim for damages or amount in interpleader exclusive of court costs, interest, and attorney fees is $7,500 or more.

(d) The fee for filing a counter claim, cross claim, complaint in intervention, third party complaint, or other claim for relief against an existing or joined party other than the original complaint or petition is:

(i) $55 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $150 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000 and less than $10,000;

(iii) $155 if the original petition is filed under Subsection (1)(a), the claim for relief is $10,000 or more, or the party seeks relief other than monetary damages; and

(iv) $115 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter 4, Separate Maintenance.

(e) The fee for filing a small claims counter affidavit is:

(i) $50 if the claim for relief exclusive of court costs, interest, and attorney fees is $2,000 or less;

(ii) $70 if the claim for relief exclusive of court costs, interest, and attorney fees is greater than $2,000, but less than $7,500; and

(iii) $120 if the claim for relief exclusive of court costs, interest, and attorney fees is $7,500 or more.

(f) The fee for depositing funds under Section 57-1-29 when not associated with an action already before the court is determined under Subsection (1)(b) based on the amount deposited.

(g) The fee for filing a petition is:

(i) $225 for trial de novo of an adjudication of the justice court or of the small claims department; and

(ii) $65 for an appeal of a municipal administrative determination in accordance with Section 10-3-703.7.

(h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or petition for writ of certiorari is $225.

(i) The fee for filing a petition for expungement is $135.

(j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'

Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges' Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement Act.

(ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be allocated by the state treasurer to be deposited in the restricted account, Children's Legal Defense Account, as provided in Section 51-9-408.

(iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g), and (1)(r) shall be allocated to and deposited with the Dispute Resolution Account as provided in Section 78B-6-209.

(iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv), (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court Security Account, as provided in Section 78A-2-602.

(k) The fee for filing a judgment, order, or decree of a court of another state or of the United States is $35.

(l) The fee for filing probate or child custody documents from another state is $35.

(m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the Utah State Tax Commission is $30.

(ii) The fee for filing an abstract or transcript of judgment of a court of law of this state or a judgment, order, or decree of an administrative agency, commission, board, council, or hearing officer of this state or of its political subdivisions other than the Utah State Tax Commission, is $50.

(n) The fee for filing a judgment by confession without action under Section 78B-5-205 is $35.

(o) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before the court is $35.

(p) The fee for filing a petition or counter-petition to modify a decree of divorce is $100.

(q) The fee for filing any accounting required by law is:

(i) $15 for an estate valued at $50,000 or less;

(ii) $30 for an estate valued at $75,000 or less but more than $50,000;

(iii) $50 for an estate valued at $112,000 or less but more than $75,000;

(iv) $90 for an estate valued at $168,000 or less but more than $112,000; and

(v) $175 for an estate valued at more than $168,000.

(r) The fee for filing a demand for a civil jury is $250.

(s) The fee for filing a notice of deposition in this state concerning an action pending in another state under Utah Rule of Civil Procedure 26 is $35.

(t) The fee for filing documents that require judicial approval but are not part of an action before the court is $35.

(u) The fee for a petition to open a sealed record is $35.

(v) The fee for a writ of replevin, attachment, execution, or garnishment is $50 in addition to any fee for a complaint or petition.

(w) (i) The fee for a petition for authorization for a minor to marry required by Section 30-1-9 is $5.

(ii) The fee for a petition for emancipation of a minor provided in Title 78A, Chapter 6, Part 8, Emancipation, is $50.

(x) The fee for a certificate issued under Section 26-2-25 is $8.

(y) The fee for a certified copy of a document is $4 per document plus 50 cents per page.

(z) The fee for an exemplified copy of a document is $6 per document plus 50 cents per page.

(aa) The Judicial Council shall by rule establish a schedule of fees for copies of documents and forms and for the search and retrieval of records under Title 63G, Chapter 2, Government Records Access and Management Act. Fees under this Subsection (1)(aa) shall be credited to the court as a reimbursement of expenditures.

(bb) There is no fee for services or the filing of documents not listed in this section or otherwise provided by law.

(cc) Except as provided in this section, all fees collected under this section are paid to the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk

accepts the pleading for filing or performs the requested service.

(dd) The filing fees under this section may not be charged to the state, its agencies, or political subdivisions filing or defending any action. In judgments awarded in favor of the state, its agencies, or political subdivisions, except the Office of Recovery Services, the court shall order the filing fees and collection costs to be paid by the judgment debtor. The sums collected under this Subsection (1)(dd) shall be applied to the fees after credit to the judgment, order, fine, tax, lien, or other penalty and costs permitted by law.

(2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts shall transfer all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of Facilities Construction and Management Capital Projects Fund.

(ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities Construction and Management shall use up to $3,750,000 of the revenue deposited in the Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to initiate the development of a courts complex in Salt Lake City.

(B) If the Legislature approves funding for construction of a courts complex in Salt Lake City in the 1995 Annual General Session, the Division of Facilities Construction and Management shall use the revenue deposited in the Capital Projects Fund under this Subsection (2)(a)(ii) to construct a courts complex in Salt Lake City.

(C) After the courts complex is completed and all bills connected with its construction have been paid, the Division of Facilities Construction and Management shall use any money remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal District Court building.

(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).

(iv) The Division of Facilities Construction and Management shall:

(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and

(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).

(b) After June 30, 1998, the administrator of the courts shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.

(c) The Division of Finance shall deposit all revenues received from the court administrator into the restricted account created by this section.

(d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78A-5-110 shall be calculated on the balance of the fine or bail forfeiture paid.

(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.

(b) The Legislature may appropriate money from the restricted account to the administrator of the courts for the following purposes only:

(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

(ii) to cover operations and maintenance costs on the court complex.

FISCAL NOTE

H.B. 389 1st Sub. (Buff)

SHORT TITLE: Offender Registry Review

SPONSOR: Draxler, J.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Courts $51,800 in one-time General Fund in FY 2012 and $22,800 each year thereafter for increased caseload. General Fund revenue of $51,800 will be generated for FY 2012 and $22,800 for each fiscal year thereafter for a total net General Fund impact of $0 each year. Restricted fund revenue of $11,000 will be generated in FY 2012 and $4,800 each year thereafter. Restricted fund revenue will be deposited in the Judges Contributory Trust Fund, Children's Legal Defense Account, and the Dispute Resolution Account.

STATE BUDGET DETAIL TABLE	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund	$0	$22,800	$22,800
General Fund, One-Time	$0	$29,000	$0
Restricted Funds	$0	$11,000	$4,800
Total Revenue	$0	$62,800	$27,600
Expenditure:			
General Fund	$0	$22,800	$22,800
General Fund, One-Time	$0	$29,000	$0
Total Expenditure	$0	$51,800	$22,800
Net Impact, All Funds (Rev.-Exp.)	$0	$11,000	$4,800
Net Impact, General/Education Funds	$0	$0	$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Individuals that elect to petition to have their name removed from the Sex Offender and Kidnapping Registry will pay a $125 filing fee. Total payments are estimated at $62,800 in FY 2012 for 500 cases and $27,600 each year thereafter for 220 cases annually.

3/2/2011, 04:25 PM, Lead Analyst: Syphus, G./Attorney: ECM

Office of the Legislative Fiscal Analyst