

**OFFENDER REGISTRY REVIEW**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jack R. Draxler**

Senate Sponsor: Lyle W. Hillyard

---

---

**LONG TITLE**

**Committee Note:**

The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.

**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; ~~H→~~ or ~~←H~~
- unlawful sexual activity with a minor; ~~H→~~ [~~or~~
- ~~————— • a misdemeanor violation of voyeurism;] ←H~~

▶ requires that the person have successfully completed any court-ordered treatment and not have any subsequent convictions;

~~H→~~ ▶ sets fees for obtaining a certificate of eligibility and filing the petition; ~~←H~~

▶ requires that a copy of the petition be delivered to the prosecutor and victim, or if the victim is still a minor, the victim's parents; 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:**

H.B. 13



28 None

29 **Other Special Clauses:**

30 **Ĥ→ [None] This bill coordinates with H.B. 17, Sex Offender Registry Chapter and H.B.**

30a **18, Kidnapping Offender Amendments. ←Ĥ**

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **77-27-21.5**, as last amended by Laws of Utah 2011, Chapters 48, 320 and last amended  
34 by Coordination Clause, Laws of Utah 2011, Chapter 48

35 **78A-2-301**, as last amended by Laws of Utah 2011, Chapter 22

35a **Ŝ→ Utah Code Sections Affected by Coordination Clause:**

35b **77-27-21.5**, as last amended by Laws of Utah 2011, Chapters 48, 320 and last amended  
35c **by Coordination Clause, Laws of Utah 2011, Chapter 48**

35d **77-41-102, Utah Code Annotated 1953**

35e **77-41-109, Utah Code Annotated 1953**

35f **77-41-112, Utah Code Annotated 1953** ←Ŝ



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

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

39 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**

40 **Law enforcement and courts to report -- Penalty -- Effect of expungement.**

41 (1) As used in this section:

42 (a) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
43 Safety established in Section 53-10-201.

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

46 (c) "Certificate of eligibility" means a document issued by the Bureau of Criminal  
47 Identification showing that the offender has met the requirements of Subsection (32).

48 (d) "Department" means the Department of Corrections.

49 (e) "Division" means the Division of Juvenile Justice Services.

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

53 (g) "Indian Country" means:

54 (i) all land within the limits of any Indian reservation under the jurisdiction of the

462 retirement, or investment accounts.

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

466 (a) the offender was convicted of:

467 (i) Section 76-5- ~~H~~→ [40] 401 ~~←H~~ , unlawful sexual activity with a minor ~~H~~→ and at the  
 467a time of the offense was not more than 10 years older than the victim ~~←H~~ ;

468 (ii) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old ~~H~~→ and at the  
 468a time of the offense was not more than 15 years older than the victim ~~←H~~ ; or

469 (iii) ~~H~~→ [a misdemeanor violation of Section 76-9-702.7, voyeurism] any offense  
 469a substantially equivalent to an offense listed in Subsection (a)(i) or (a)(ii) and is required to  
 469b register under Subsection (1)(p)(ii), or (1)(p)(iv) ~~←H~~ ;

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

471 (c) the offender has successfully completed all treatment ordered by the court or the  
 472 Board of Pardons and Parole;

473 (d) the offender has not been convicted of a crime, excluding traffic offenses, as  
 474 evidenced by a certificate of eligibility issued by the bureau;

475 (e) the offender ~~H~~→ has paid all restitution ordered by the court;

475a (f) the offender ~~←H~~ has complied with all the registration requirements of this section; and  
 476 ~~H~~→ [(f)] (g) ~~←H~~ the office that prosecuted the offender, and the victim, or if the victim is  
 476a still a

477 minor, the victim's parent, are notified and provided with an opportunity to respond in  
 478 accordance with Subsection (35).

479 (33) (a) (i) An offender seeking removal from the Sex Offender or Kidnap Offender  
 480 Registry shall apply for a certificate of eligibility from the bureau.

481 (ii) An offender who intentionally or knowingly provides any false or misleading  
 482 information to the bureau when applying for a certificate of eligibility is guilty of a class B  
 483 misdemeanor and subject to prosecution under Section 76-8-504.6.

484 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate  
 485 of eligibility to anyone providing false information on an application.

486 (b) (i) The bureau shall perform a check of records of governmental agencies,  
 487 including national criminal data bases, to determine whether an offender is eligible to receive a  
 488 certificate of eligibility under this Section.

489 (ii) If the offender meets all of the criteria under Subsections (32)(b) and (d), the  
 490 bureau shall issue a certificate of eligibility to the offender which shall be valid for a period of  
 491 90 days from the date the certificate is issued.

492 (c) (i) The bureau shall charge ~~H~~→ an ~~←H~~ application ~~H~~→ [and issuance fees]  
 492a fee of \$193 ~~←H~~ for a certificate of

493 eligibility ~~H→~~ . **This fee shall expire on June 30, 2013 and be reset ←H** in accordance with the  
 493a process in Section 63J-1-504.

494 (ii) The ~~H→~~ [application] ←H fee shall be paid at the time the offender submits an  
 494a application for  
 495 a certificate of eligibility to the bureau.

496 (iii) If the bureau determines that the issuance of a certificate of eligibility is  
 497 appropriate, the offender will be ~~H→~~ [charged an additional fee for the issuance of] issued ←H a  
 497a certificate of  
 498 eligibility ~~H→~~ at no additional charge ←H .

499 (d) Funds generated under this Subsection (33) shall be deposited in the General Fund  
 500 as a dedicated credit by the department to cover the costs incurred in determining eligibility.

501 (34) (a) The offender shall ~~H→~~ file the petition, original information, and court docket  
 501a with the court, and ←H deliver a copy of the petition to the office of the prosecuting  
 502 attorney.

503 (i) Upon receipt of a petition for removal from the Sex Offender and Kidnap Offender  
 504 Registry, the prosecuting attorney shall provide notice of the petition by first-class mail to the  
 505 victim at the most recent address of record on file or, if the victim is still a minor, to the parents  
 506 of the victim.

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

509 (b) The prosecuting attorney ~~H→~~ [and the victim, if applicable, may respond to the petition  
 510 by filing] shall provide the following, if available, to the court within 30 days after receiving the  
 510a petition:

510b (i) presentencing report;

510c (ii) any evaluation done as part of sentencing; and

510d (iii) any other information the prosecutor feels the court should consider.

510e (c) The victim may respond to the petition by filing ←H a recommendation or objection  
 510f with the court within 30 days after the mailing of the  
 511 petition.

512 (35) The court shall review all documents submitted with the petition ~~H→~~ , ←H and  
 512a ~~H→~~ [may] shall ←H hold a  
 513 hearing ~~H→~~ if requested by the prosecutor or the victim ←H . The court shall consider whether  
 513a the offender has paid all restitution ordered by the  
 514 court or the Board of Pardons. If the court determines that it is not contrary to the interests of  
 515 the public to do so, it may grant the petition and order removal. If the court grants the petition,  
 516 it shall forward a copy of the order to the department and the prosecutor's office.

517 (36) The prosecutor's office shall notify the victim of the court's decision in the same

679 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in  
 680 a court of record to the Division of Finance for deposit in the restricted account created by this  
 681 section. The division of money pursuant to Section 78A-5-110 shall be calculated on the  
 682 balance of the fine or bail forfeiture paid.

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

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

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

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

689a **H→ Section 3. Coordination Clause.**

689b **If this H.B. 13 and H.B. 17, Sex Offender Registry Chapter, both pass and become law,**  
 689c **the Legislature intends that:**

689d **(1) Subsections 77-27-21.5(1)(a), (c), and (q) in this bill be merged alphabetically into**  
 689e **Section 77-41-102 in H.B. 17, renumber the subsections, and change the internal cross**  
 689f **references accordingly;**

689g **(2) Subsection 77-41-109(2) in H.B. 17 be amended to read:**

689h **"(2) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted**  
 689i **of any offense listed in Subsection 77-41-102(7) or (14) is not relieved from the responsibility to**  
 689j **register as required under this section, unless the offender is removed from the registry under**  
 689k **Section 77-41-112.;**

689l **(3) Subsections 77-27-21.5(32) through (36) in this bill be created as a new**  
 689m **Section 77-41-112, renumber the subsections, and change the internal cross references**  
 689n **accordingly; and**

689o **(4) the Office of Legislative Research and General Counsel make these changes when**  
 689p **preparing the Utah Code database for publication.**

689q **Section 4. Coordination Clause --Coordinating H.B. 13, H.B. 17, and H.B. 18 -- Merging**  
 689r **technical amendments -- Creating new Section.**

689s **If this H.B. 13, H.B. 17, Sex Offender Registry, and H.B. 18, Kidnapping Offender**  
 689t **Amendments, all pass and become law, the Legislature intends that:**

689u **(1) Subsection (3) of Section 3, Coordination clause with H.B. 13 and H.B. 17 not take**  
 689v **effect; and**

689w **(2) Subsections 77-27-21.5(32) through (36) in this H.B. 13 be merged with Subsections**  
 689x **77-27-21.5(32) through (35) in H.B. 18 to create the following new Section 77-41-112: ←H**

689y H→"77-41-112. Removal from Registry -- Requirements -- Procedure.

689z (1) An offender may petition the court where the offender was convicted of the offense  
 689aa requiring registration for an order removing the offender from the Sex Offender and Kidnap  
 689ab Offender Registry if:

689ac (a) the offender was convicted of violating:

689ad (i) Section 76-5-301, Kidnapping, and the conviction of violating

689ae Section 76-5-301 is the only conviction for which the offender is required to register;

689af (ii) Section 76-5-304, Unlawful Detention, and the conviction of violating

689ag Section 76-5-304 is the only conviction for which the offender is required to register;

689ah (iii) Section 76-5-401, unlawful sexual activity with a minor and, at the time of the  
 689ai offense, was not more than 10 years older than the victim; or

689aj (iv) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old, and at the  
 689ak time of the offense, was not more than 10 years older than the victim;

689al (b) five years have passed since the completion of the offender's sentence;

689am (c) the offender has successfully completed all treatment ordered by the court or the  
 689an Board of Pardons and Parole relating to the conviction;

689ao (d)(i) the offender has not been convicted of any other crime, excluding traffic offenses,  
 689ap as evidenced by a certificate of eligibility issued by the bureau;

689aq (ii) as used in this Section, "traffic offense" does not include a violation of Title 41,  
 689ar Chapter 6a, Part 5, Driving Under The Influence And Reckless Driving;

689as (e) the offender has paid all restitution ordered by the court;

689at (f) the offender has complied with all the registration requirements at all times as  
 689au required in this chapter, as evidenced by a document obtained by the offender from the Utah  
 689av Department of Corrections, which confirms compliance; and

689aw (g) the office that prosecuted the offender, and the victim, or if the victim is still a  
 689ax minor, the victim's parent, are notified and provided with an opportunity to respond in  
 689ay accordance with Subsection (3)(a).

689az (2) (a) (i) An offender seeking removal from the Sex Offender or Kidnap Offender  
 689ba Registry shall apply for a certificate of eligibility from the bureau.

689bb (ii) An offender who intentionally or knowingly provides any false or misleading  
 689bc information to the bureau when applying for a certificate of eligibility is guilty of a class B  
 689bd misdemeanor and subject to prosecution under Section 76-8-504.6.

689be (iii) Regardless of whether the offender is prosecuted, the bureau may deny a  
 689bf certificate of eligibility to anyone providing false information on an application.←H

689bg H→(b) (i) The bureau shall perform a check of records of governmental agencies,  
 689bh including national criminal data bases, to determine whether an offender is eligible to receive a  
 689bi certificate of eligibility under this Section.

689bj (ii) If the offender meets all of the criteria under Subsections (1)(b) and (d), the bureau  
 689bk shall issue a certificate of eligibility to the offender which shall be valid for a period of 90 days  
 689bl from the date the certificate is issued.

689bm (c) (i) The bureau shall charge application and issuance fees for a certificate of  
 689bn eligibility in accordance with the process in Section 63J-1-504.

689bo (ii) The application fee shall be paid at the time the offender submits an application for  
 689bp a certificate of eligibility to the bureau.

689bq (iii) If the bureau determines that the issuance of a certificate of eligibility is  
 689br appropriate, the offender will be charged an additional fee for the issuance of a certificate of  
 689bs eligibility.

689bt (d) Funds generated under this Subsection (2) shall be deposited in the General Fund  
 689bu as a dedicated credit by the department to cover the costs incurred in determining eligibility.

689bv (3) (a) The offender shall file the petition, original information, and court docket with  
 689bw the court, and deliver a copy of the petition to the office of the prosecutor.

689bx (i) Upon receipt of a petition for removal from the Sex Offender and Kidnap Offender  
 689by Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to  
 689bz the victim at the most recent address of record on file or, if the victim is still a minor, to the  
 689ca parent or guardian of the victim.

689cb (ii) The notice shall include a copy of the petition, state that the victim has a right to  
 689cc object to the removal of the offender from the registry, and provide instructions for registering  
 689cd an objection with the court.

689ce (b) The office of the prosecutor shall provide the following, if available, to the court  
 689cf within 30 days after receiving the petition:

689cg (i) presentencing report;

689ch (ii) any evaluation done as part of sentencing; and

689ci (iii) any other information the office of the prosecutor feels the court should consider.

689cj (c) The victim, or the victim's parent or guardian if the victim is a minor, may respond  
 689ck to the petition by filing a recommendation or objection with the court within 45 days after the  
 689cl mailing of the petition to the victim.

689cm (4)(a) The court shall:

689cn (i) review the petition and all documents submitted with the petition; and←H

689co Ĥ→(ii) hold a hearing if requested by the prosecutor or the victim.  
689cp (b) The court shall consider whether the offender has paid all restitution ordered by the  
689cq court or the Board of Pardons.  
689cr (c) If the court determines that it is not contrary to the interests of the public to do so, it  
689cs may grant the petition and order removal of the offender from the registry.  
689ct (d) If the court grants the petition, it shall forward a copy of the order directing  
689cu removal of the offender from the registry to the department and the office of the prosecutor.  
689cv (5) The office of the prosecutor shall notify the victim of the court's decision in the  
689cw same manner as notification was provided in Subsection (3)(a).";  
689cx (c) change the internal cross references accordingly; and  
689cy (d) the Office of Legislative Research and General Counsel make these changes when  
689cz preparing the Utah Code database for publication. ←Ĥ

---

Legislative Review Note  
as of 9-22-11 9:58 AM

Office of Legislative Research and General Counsel