

**KIDNAPPING OFFENDER AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Fred C. Cox**

Senate Sponsor: Benjamin M. McAdams

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**LONG TITLE**

**Committee Note:**

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

**General Description:**

This bill modifies the Code of Criminal Procedure regarding offenses on the Sex Offender and Kidnap Offender registry and a process for kidnapping and unlawful detention offenders to be removed from the registry.

**Highlighted Provisions:**

This bill:

▶ provides a judicial process by which an offender under Section 76-5-301 regarding kidnapping or an offender under Section 76-5-304 regarding unlawful detention may petition the court for removal from the registry;

▶ provides a process for the offender to obtain criminal records necessary for the judicial hearing; and

▶ removes the offense of kidnapping from the list of offenses required to be on the sex offender registry, but does not remove kidnapping offenses involving children or aggravating circumstances.

**Money Appropriated in this Bill:**

⚡→ [—None] This bill coordinates with H.B. 17 by providing technical amendments. ⚡←

**Other Special Clauses:**

H.B. 18



431 or in a state mental hospital is not required to pay the annual fee.

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

435 (i) data entry;

436 (ii) processing registration packets;

437 (iii) updating registry information;

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

439 and

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

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

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

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

449 (32) An offender may petition the court where the offender was convicted of the  
 450 offense requiring registration for an order requiring that the offender be removed from the Sex  
 451 Offender and Kidnap Offender Registry if:

452 (a) (i) the offender was convicted of violating Section 76-5-301, Kidnapping, and the  
 453 conviction of violating Section 76-5-301 is the only conviction for which the offender is  
 454 required to register; ~~§~~ → [or] ← ~~§~~

455 (ii) the offender was convicted of violating Section 76-5-304, Unlawful Detention, and  
 456 the conviction of violating Section 76-5-304 is the only conviction for which the offender is  
 457 required to register; ~~§~~ → or

457a (iii) the offender was convicted of an offense substantially equivalent to an offense  
 457b listed in Subsection (32)(a)(i) or (ii) and is required to register under Subsection (1)(g)(ii), or  
 457c (1)(g)(v); ← ~~§~~

458 (b) the offender has successfully completed all treatment ordered by the court or the  
 459 Board of Pardons relating to the conviction;

460 (c) (i) the offender has not been convicted of any other crime, excluding traffic  
 461 offenses, subsequent to the commission of the offense in violation of Section 76-5-301 or

462 Section 76-5-304, as evidenced by a certificate of eligibility issued by the bureau; and  
463 (ii) as used in this Subsection (32)(c), "traffic offense" does not include a violation of  
464 Title 41, Chapter 6a, Part 5, Driving Under The Influence And Reckless Driving;

465 (d) the offender has complied with all the registration requirements at all times as  
466 required in this section, as evidenced by a document obtained by the offender from the Utah  
467 Department of Corrections, which confirms compliance;

468 (e) the offender has completed probation or parole, or if the offender was not granted  
469 probation or parole, the offender has completed the terms of the sentence for the offense under  
470 this Subsection (32); and

471 (f) the office of the prosecutor who prosecuted the offender, and the victim or the  
472 victim's parent or guardian, if the victim is a minor, are notified by the court and are provided  
473 with an opportunity to respond in accordance with Subsection (34).

474 (33) (a) (i) An offender seeking removal from the Sex Offender or Kidnap Offender  
475 Registry under Subsection (32) shall apply for a certificate of eligibility from the Bureau of  
476 Criminal Identification.

477 (ii) An offender who intentionally or knowingly provides any false or misleading  
478 information to the bureau when applying for a certificate of eligibility is guilty of a class B  
479 misdemeanor and subject to prosecution under Section 76-8-504.6, which concerns providing  
480 false or misleading information.

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

483 (b) (i) The bureau shall perform a check of records of governmental agencies,  
484 including national criminal databases, to determine whether an offender is eligible to receive a  
485 certificate of eligibility under this Subsection (33).

486 (ii) If the offender meets all of the criteria under Subsections (32)(a) and (c), the bureau  
487 shall issue a certificate of eligibility to the offender, which is valid for 90 days from the date  
488 the certificate is issued.

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

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

492a **Š→ Section 2. Coordinating H.B. 18 and H.B. 17-- Merging technical amendments--**  
492b **Creating new section.**

492c **If this H.B. 18 and H.B. 17, Sex Offender Registry Chapter, both pass and become law, the**  
492d **Legislature intends that:**

- 492e (1) Subsections 77-27-21.5(32) through (35) in this bill be created as a new Section  
492f 77-41-112, that the subsections be renumbered, and that the internal cross references be  
492g changed accordingly;
- 492h (2) Subsection 77-41-109(2) in H.B. 17 be amended to read:  
492i "(2) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted  
492j of any offense listed in Subsection 77-41-102(7) or (14) is not relieved from the responsibility to  
492k register as required under this section, unless the offender is removed from the registry under  
492l Section 77-41-112."; and
- 492m (3) the Office of Legislative Research and General Counsel make these changes when  
492n preparing the Utah Code database for publication. ←§