

KIDNAPPING OFFENDER AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred C. Cox

Senate Sponsor: Benjamin M. McAdams

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



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **77-27-21.5**, as last amended by Laws of Utah 2011, Chapters 48, 320 and last amended
32 by Coordination Clause, Laws of Utah 2011, Chapter 48



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

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

36 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**
37 **Law enforcement and courts to report -- Penalty -- Effect of expungement.**

38 (1) As used in this section:

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

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

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

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

45 (e) "Indian Country" means:

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

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

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

54 (f) "Jurisdiction" means any state, Indian Country, United States Territory, or any
55 property under the jurisdiction of the United States military, Canada, the United Kingdom,
56 Australia, or New Zealand.

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

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

- 59 ~~[(A) Section 76-5-301, Subsection (1)(c) or (d), kidnapping;]~~
60 ~~[(B)]~~ (A) Section 76-5-301.1, child kidnapping;
61 ~~[(C)]~~ (B) Section 76-5-302, aggravated kidnapping;
62 ~~[(D)]~~ (C) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or
63 ~~[(E)]~~ (D) attempting, soliciting, or conspiring to commit any felony offense listed in
64 Subsections (1)(g)(i)(A) through ~~[(D)]~~ (C);
65 (ii) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
66 commit a crime in another jurisdiction, including any state, federal, or military court that is
67 substantially equivalent to the offenses listed in Subsection (1)(g)(i) and who is:
68 (A) a Utah resident; or
69 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
70 10 or more days, regardless of whether or not the offender intends to permanently reside in this
71 state;
72 (iii) (A) is required to register as an offender in any other jurisdiction, or who is
73 required to register as an offender by any state, federal, or military court; and
74 (B) in any 12 month period, is in this state for a total of 10 or more days, regardless of
75 whether or not the offender intends to permanently reside in this state;
76 (iv) is a nonresident regularly employed or working in this state, or who is a student in
77 this state, and was convicted of one or more offenses listed in Subsection (1)(g), or any
78 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
79 required to register in the person's state of residence;
80 (v) is found not guilty by reason of insanity in this state or in any other jurisdiction of
81 one or more offenses listed in Subsection (1)(g); or
82 (vi) is adjudicated delinquent based on one or more offenses listed in Subsection
83 (1)(g)(i) and who has been committed to the division for secure confinement and remains in the
84 division's custody 30 days prior to the person's 21st birthday.
85 (h) "Natural parent" means a minor's biological or adoptive parent, and includes the
86 minor's noncustodial parent.
87 (i) "Offender" means a kidnap offender as defined in Subsection (1)(g) or a sex
88 offender as defined in Subsection (1)(n).
89 (j) "Online identifier" or "Internet identifier":

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

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

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

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

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

102 (n) "Sex offender" means any person:

103 (i) convicted in this state of:

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

105 (B) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
106 2011;

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

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

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

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

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

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

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

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

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

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

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

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

119 (O) Section 76-5-412, custodial sexual relations, when the person in custody is younger
120 than 18 years of age, if the offense is committed on or after May 10, 2011;

- 121 (P) Section 76-5b-201, sexual exploitation of a minor;
- 122 (Q) Section 76-7-102, incest;
- 123 (R) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense
124 four or more times;
- 125 (S) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the
126 offense four or more times;
- 127 (T) any combination of convictions of Subsection 76-9-702(1), lewdness, and of
128 Subsection 76-9-702(3), sexual battery, that total four or more convictions;
- 129 (U) Section 76-9-702.5, lewdness involving a child;
- 130 (V) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 131 (W) Section 76-10-1306, aggravated exploitation of prostitution; or
- 132 (X) attempting, soliciting, or conspiring to commit any felony offense listed in
133 Subsection (1)(n)(i);
- 134 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
135 commit a crime in another jurisdiction, including any state, federal, or military court that is
136 substantially equivalent to the offenses listed in Subsection (1)(n)(i) and who is:
- 137 (A) a Utah resident; or
- 138 (B) not a Utah resident, but who, in any 12 month period, is in this state for a total of
139 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 140 (iii) (A) who is required to register as an offender in any other jurisdiction, or who is
141 required to register as an offender by any state, federal, or military court; and
- 142 (B) who, in any 12 month period, is in the state for a total of 10 or more days,
143 regardless of whether or not the offender intends to permanently reside in this state;
- 144 (iv) who is a nonresident regularly employed or working in this state or who is a
145 student in this state and was convicted of one or more offenses listed in Subsection (1)(n)(i), or
146 any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is
147 required to register in the person's jurisdiction of residence;
- 148 (v) who is found not guilty by reason of insanity in this state, or in any other
149 jurisdiction of one or more offenses listed in Subsection (1)(n)(i); or
- 150 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
151 (1)(n)(i) and who has been committed to the division for secure confinement and remains in the

152 division's custody 30 days prior to the person's 21st birthday.

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

155 (2) The department, to assist in investigating kidnapping and sex-related crimes, and in
156 apprehending offenders, shall:

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

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

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

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

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

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

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

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

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

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

175 (a) placement on probation;

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

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

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

182 (e) termination of probation or parole.

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

186 (a) commitment to the correctional facility; and

187 (b) release from confinement.

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

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

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

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

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

200 (B) certify annually with the department.

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

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

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

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

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

213 (10) An offender convicted by any other jurisdiction is required to register under

214 Subsection (1)(g) or (n) and Subsection (12) and shall register with the department within 10
215 days of entering the state, regardless of the offender's length of stay.

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

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

221 (12) (a) Except as provided in Subsections (12)(b), (c), and (d), an offender shall, for
222 the duration of the sentence and for 10 years after termination of sentence or custody of the
223 division, register every year during the month of the offender's birth, during the month that is
224 the sixth month after the offender's birth month, and also within three business days of every
225 change of the offender's primary residence, any secondary residences, place of employment,
226 vehicle information, or educational information required to be submitted under Subsection
227 (14).

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

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

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

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

245 required to be submitted under Subsection (14).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

268 (G) Section 76-5b-201, sexual exploitation of a minor; or

269 (H) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10,
270 2011.

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

274 (e) An offender who is required to register under this Subsection (12) shall surrender
275 the offender's license, certificate, or identification card as required under Subsection

276 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as
277 provided under Section 53-3-205 or 53-3-804.

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

281 (13) An agency in the state that registers an offender on probation, an offender who has
282 been released from confinement to parole status or termination, or an offender whose sentence
283 has expired shall inform the offender of the duty to comply with:

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

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

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

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

292 (b) the driver license certificate or identification card surrender requirement under
293 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
294 53-3-804.

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

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

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

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

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

303 (e) a current photograph of the offender;

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

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

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

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

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

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

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

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

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

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

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

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

326 (15) The department shall:

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

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

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

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

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

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

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

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

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

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

343 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not
344 less than 90 days and also at least one year of probation if:

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

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

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

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

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

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

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

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

369 (19) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted
370 of any offense listed in Subsection (1)(g) or (n) is not relieved from the responsibility to
371 register as required under this section, unless the offender is removed from the registry under
372 Subsection (35).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

409 (e) a current photograph of the offender;

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

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

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

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

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

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

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

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

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

430 (b) Notwithstanding Subsection (30)(a), an offender who is confined in a secure facility

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. ←§**

493 (iii) If the bureau determines that the issuance of a certificate of eligibility is
494 appropriate, the offender will be charged an additional fee for the issuance of a certificate of
495 eligibility.

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

498 (34) (a) The offender under Subsection (32) shall deliver a copy of the petition to the
499 office of the prosecuting attorney.

500 (b) (i) Upon receipt of a petition for removal from the Sex Offender and Kidnap
501 Offender Registry, the prosecuting attorney shall provide notice of the petition by first-class
502 mail to the victim, or the victim's parent or guardian, if the victim is a minor, at the most recent
503 address on file.

504 (ii) The notice shall include a copy of the petition, state that the victim has a right to
505 object to the removal of the offender from the registry, and provide instructions for submitting
506 an objection to the court.

507 (c) The office of the prosecutor, and the victim if applicable, may respond to the
508 petition by filing a recommendation or objection regarding the offender's removal from the
509 registry with the court within 45 days after the date that the petition is mailed to the victim, or
510 to the victim's parent or guardian, if the victim is a minor.

511 (35) (a) The court shall review the petition and all documents submitted regarding the
512 petition and may hold a hearing.

513 (b) If the court determines, based on the information provided under Subsection
514 (35)(a), that it is in the public's interest, it may grant the petition and order removal of the
515 offender from the registry.

516 (c) If the court grants the petition, it shall forward a copy of the order to the department
517 directing the removal of the offender from the registry.

Legislative Review Note
as of 10-26-11 1:30 PM

Office of Legislative Research and General Counsel