

HB0017S01 compared with HB0017

~~{deleted text}~~ shows text that was in HB0017 but was deleted in HB0017S01.

inserted text shows text that was not in HB0017 but was inserted into HB0017S01.

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Representative Jack R. Draxler proposes the following substitute bill:

SEX OFFENDER REGISTRY CHAPTER

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: _____

LONG TITLE

~~{Committee Note:~~

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

~~{General Description:~~

This bill creates the Sex and Kidnap Offender Registry chapter in Title 77.

Highlighted Provisions:

This bill:

- ▶ repeals Section 77-27-21.5; and
- ▶ creates a new chapter in Title 77, Code of Criminal Procedure, from its provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

41-3-205.5, as enacted by Laws of Utah 2010, Chapter 291
41-3-209, as last amended by Laws of Utah 2010, Chapters 291 and 342
53-3-205, as last amended by Laws of Utah 2011, Chapters 152, 190, 415, and 428
53-3-216, as last amended by Laws of Utah 2008, Chapters 304 and 355
53-3-413, as last amended by Laws of Utah 2011, Chapter 190
53-3-804, as last amended by Laws of Utah 2011, Chapters 152 and 415
53-3-806.5, as enacted by Laws of Utah 2007, Chapter 294
53-3-807, as last amended by Laws of Utah 2011, Chapter 366
53-10-404, as last amended by Laws of Utah 2010, Chapter 405
62A-7-104, as last amended by Laws of Utah 2008, Chapters 3 and 355
63G-2-302, as last amended by Laws of Utah 2011, Chapters 85, 327, and 413
76-3-402, as last amended by Laws of Utah 2007, Chapter 103
77-27-21.7, as enacted by Laws of Utah 2007, Chapter 350
77-27-21.8, as enacted by Laws of Utah 2009, Chapter 249
77-40-105, as last amended by Laws of Utah 2011, Chapter 26

ENACTS:

77-41-101, Utah Code Annotated 1953
77-41-102, Utah Code Annotated 1953
77-41-103, Utah Code Annotated 1953
77-41-104, Utah Code Annotated 1953
77-41-105, Utah Code Annotated 1953
77-41-106, Utah Code Annotated 1953
77-41-107, Utah Code Annotated 1953
77-41-108, Utah Code Annotated 1953
77-41-109, Utah Code Annotated 1953
77-41-110, Utah Code Annotated 1953
77-41-111, Utah Code Annotated 1953

REPEALS:

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

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

Section 1. Section **41-3-205.5** is amended to read:

41-3-205.5. Licenses -- Criminal background check required on salesperson's licenses -- Payment of cost.

(1) (a) Every applicant for a salesperson's license shall submit fingerprints with a completed application to the division.

(b) A person required to renew a salesperson license on or before June 30, 2010, shall submit fingerprints to the division on or before November 30, 2010.

(2) The division shall submit fingerprints for each applicant described in Subsection (1) to the Bureau of Criminal Identification established in Section 53-10-201.

(3) The Bureau of Criminal Identification shall:

(a) check the information submitted by the division for an applicant under Subsection (2) against the applicable state and regional criminal records databases; and

(b) release to the division all information obtained under Subsection (3)(a) relating to the applicant.

(4) (a) The Bureau of Criminal Identification shall maintain a separate file of fingerprints submitted under Subsection (2) and notify the division when a new entry is made in the applicable state and regional database against a person whose fingerprints are held in the file regarding any matter involving an arrest under state law involving:

(i) motor vehicles;

(ii) controlled substances;

(iii) fraud; or

(iv) a registerable sex offense under Section [~~77-27-21.5~~] 77-41-106.

(b) Upon request by the division, the Bureau of Criminal Identification shall inform the division whether a person whose arrest was reported to the division under Subsection (4)(a) was subsequently convicted of the charge for which the person was arrested.

(5) In addition to any fees imposed under this chapter, the division shall:

(a) impose on individuals submitting fingerprints in accordance with this section the

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fees that the Bureau of Criminal Identification is authorized to collect for the services the Bureau of Criminal Identification provides under Subsections (3) and (4); and

(b) remit the fees collected under Subsection (5)(a) to the Bureau of Criminal Identification.

(6) The division shall use information received from the Bureau of Criminal Identification under this section to determine whether a license should be denied, suspended, or revoked under Section 41-3-209.

Section 2. Section **41-3-209** is amended to read:

41-3-209. Administrator's findings -- Suspension and revocation of license.

(1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.

(2) (a) On December 1, 2010, the administrator shall suspend the license of a salesperson who fails to submit to the division fingerprints as required under Subsection 41-3-205.5(1)(b) on or before November 30, 2010.

(b) If the administrator finds that there is reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.

(c) Reasonable cause for denial, suspension, or revocation of a license includes, in relation to the applicant or license holder or any of its partners, officers, or directors:

- (i) lack of a principal place of business;
- (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax Act;
- (iii) lack of a bond in effect as required by this chapter;
- (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
- (v) nonpayment of required fees;
- (vi) making a false statement on any application for a license under this chapter or for special license plates;
- (vii) a violation of any state or federal law involving motor vehicles;
- (viii) a violation of any state or federal law involving controlled substances;
- (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor

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vehicles;

(x) a violation of any state or federal law involving fraud;

(xi) a violation of any state or federal law involving a registerable sex offense under Section [~~77-27-21.5~~] 77-41-106; or

(xii) having had a license issued under this chapter revoked within five years from the date of application.

(d) Any action taken by the administrator under Subsection (2)(c)(ix) shall remain in effect until a final resolution is reached by the court involved or the charges are dropped.

(3) If the administrator finds that an applicant is not qualified to receive a license under this section, the administrator shall provide the applicant written notice of the reason for the denial.

(4) If the administrator finds that the license holder has been convicted by a court of competent jurisdiction of violating any of the provisions of this chapter or any rules made by the administrator, or finds other reasonable cause, the administrator may, by complying with the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act:

(a) suspend the license on terms and for a period of time the administrator finds reasonable; or

(b) revoke the license.

(5) (a) After suspending or revoking a license, the administrator may take reasonable action to:

(i) notify the public that the licensee is no longer in business; and

(ii) prevent the former licensee from violating the law by conducting business without a license.

(b) Action under Subsection (5)(a) may include signs, banners, barriers, locks, bulletins, and notices.

(c) Any business being conducted incidental to the business for which the former licensee was licensed may continue to operate subject to the preventive action taken under this subsection.

Section 3. Section **53-3-205** is amended to read:

53-3-205. Application for license or endorsement -- Fee required -- Tests -- Expiration dates of licenses and endorsements -- Information required -- Previous

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licenses surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required -- License agreement.

(1) An application for any original license, provisional license, or endorsement shall be:

- (a) made upon a form furnished by the division; and
- (b) accompanied by a nonrefundable fee set under Section 53-3-105.

(2) An application and fee for an original provisional class D license or an original class D license entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and the skills tests for a class D license within six months of the date of the application;

(b) a learner permit if needed pending completion of the application and testing process; and

(c) an original class D license and license certificate after all tests are passed.

(3) An application and fee for a motorcycle or taxicab endorsement entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and skills tests within six months of the date of the application;

(b) a motorcycle learner permit after the motorcycle knowledge test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(4) An application and fees for a commercial class A, B, or C license entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application;

(b) a commercial driver instruction permit if needed after the knowledge test is passed; and

(c) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(5) An application and fee for a CDL endorsement entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months of the date of the application; and

(b) a CDL endorsement when all tests are passed.

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(6) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test within the number of attempts provided in Subsection (4) or (5), each test may be taken two additional times within the six months for the fee provided in Section 53-3-105.

(7) (a) Except as provided under Subsections (7)(f), (g), and (h), an original license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(b) Except as provided under Subsections (7)(f), (g), and (h), a renewal or an extension to a license expires on the birth date of the licensee in the fifth year following the expiration date of the license certificate renewed or extended.

(c) Except as provided under Subsections (7)(f) and (g), a duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was granted.

(e) A regular license certificate and any endorsement to the regular license certificate held by a person ordered to active duty and stationed outside Utah in any of the armed forces of the United States or by an immediate family member or dependent who is residing outside of the state, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person's orders have been terminated or the person has been discharged, unless:

(i) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(ii) the licensee updates the information or photograph on the license certificate.

(f) (i) Except as provided in Subsection (7)(f)(ii), a limited-term license certificate or a renewal to a limited-term license certificate expires:

(A) on the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided under this Subsection (7), whichever is sooner; or

(B) on the birth date of the applicant in the first year following the year that the limited-term license certificate was issued if there is no definite end to the individual's period of authorized stay.

(ii) A limited-term license certificate or a renewal to a limited-term license certificate issued to an approved asylee or a refugee expires on the birth date of the applicant in the fourth

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year following the year that the limited-term license certificate was issued.

(g) A driving privilege card issued or renewed under Section 53-3-207 expires on the birth date of the applicant in the first year following the year that the driving privilege card was issued or renewed.

(h) An original license or a renewal to an original license expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.

(8) (a) In addition to the information required by Title 63G, Chapter 4, Administrative Procedures Act, for requests for agency action, each applicant shall:

(i) provide the applicant's:

(A) full legal name;

(B) birth date;

(C) gender;

(D) (I) documentary evidence of the applicant's valid Social Security number;

(II) written proof that the applicant is ineligible to receive a Social Security number;

(III) temporary identification number (ITIN) issued by the Internal Revenue Service for a person who:

(Aa) does not qualify for a Social Security number; and

(Bb) is applying for a driving privilege card; or

(IV) other documentary evidence approved by the division;

(E) Utah residence address as documented by a form or forms acceptable under rules made by the division under Section 53-3-104, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b); and

(F) submit fingerprints and a photograph in accordance with Section 53-3-205.5 if the person is applying for a driving privilege card;

(ii) provide evidence of the applicant's lawful presence in the United States by providing documentary evidence:

(A) that a person is:

(I) a United States citizen;

(II) a United States national; or

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- (III) a legal permanent resident alien; or
 - (B) of the applicant's:
 - (I) unexpired immigrant or nonimmigrant visa status for admission into the United States;
 - (II) pending or approved application for asylum in the United States;
 - (III) admission into the United States as a refugee;
 - (IV) pending or approved application for temporary protected status in the United States;
 - (V) approved deferred action status;
 - (VI) pending application for adjustment of status to legal permanent resident or conditional resident; or
 - (VII) conditional permanent resident alien status;
 - (iii) provide a description of the applicant;
 - (iv) state whether the applicant has previously been licensed to drive a motor vehicle and, if so, when and by what state or country;
 - (v) state whether the applicant has ever had any license suspended, cancelled, revoked, disqualified, or denied in the last 10 years, or whether the applicant has ever had any license application refused, and if so, the date of and reason for the suspension, cancellation, revocation, disqualification, denial, or refusal;
 - (vi) state whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, in compliance with Subsection (15);
 - (vii) state whether the applicant is required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry;
 - (viii) state whether the applicant is a veteran of the United States military, provide verification that the applicant was honorably discharged from the United States military, and state whether the applicant does or does not authorize sharing the information with the state Department of Veterans' Affairs;
 - (ix) provide all other information the division requires; and
 - (x) sign the application which signature may include an electronic signature as defined in Section 46-4-102.
- (b) Each applicant shall have a Utah residence address, unless the application is for a

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temporary CDL issued under Subsection 53-3-407(2)(b).

(c) Each applicant shall provide evidence of lawful presence in the United States in accordance with Subsection (8)(a)(ii), unless the application is for a driving privilege card.

(d) The division shall maintain on its computerized records an applicant's:

(i) (A) Social Security number;

(B) temporary identification number (ITIN); or

(C) other number assigned by the division if Subsection (8)(a)(i)(D)(IV) applies; and

(ii) indication whether the applicant is required to register as a sex offender [~~under~~
~~Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender
Registry.

(9) The division shall require proof of every applicant's name, birthdate, and birthplace by at least one of the following means:

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof, including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

(10) (a) Except as provided in Subsection (10)(c), if an applicant receives a license in a higher class than what the applicant originally was issued:

(i) the license application shall be treated as an original application; and

(ii) license and endorsement fees shall be assessed under Section 53-3-105.

(b) An applicant that receives a downgraded license in a lower license class during an existing license cycle that has not expired:

(i) may be issued a duplicate license with a lower license classification for the remainder of the existing license cycle; and

(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(22) if a duplicate license is issued under Subsection (10)(b)(i).

(c) An applicant who has received a downgraded license in a lower license class under Subsection (10)(b):

(i) may, when eligible, receive a duplicate license in the highest class previously issued during a license cycle that has not expired for the remainder of the existing license cycle; and

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(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(22) if a duplicate license is issued under Subsection (10)(c)(i).

(11) (a) When an application is received from a person previously licensed in another state to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

(b) When received, the driver's record becomes part of the driver's record in this state with the same effect as though entered originally on the driver's record in this state.

(12) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license shall be accompanied by the additional fee or fees specified in Section 53-3-105.

(13) A person who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 53-3-105.

(14) A person who applies for an original license or renewal of a license agrees that the person's license is subject to any suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(15) (a) The indication of intent under Subsection (8)(a)(vi) shall be authenticated by the licensee in accordance with division rule.

(b) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all persons who under Subsection (8)(a)(vi) indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

(A) obtain additional information for an anatomical gift registry; and

(B) inform licensees of anatomical gift options, procedures, and benefits.

(16) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may release to the Department of Veterans' Affairs the names and addresses of all persons who indicate their status as a veteran under Subsection (8)(a)(viii).

(17) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection (8)(a)(vi) or (viii), for direct or indirect:

(a) loss;

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(b) detriment; or

(c) injury.

(18) A person who knowingly fails to provide the information required under Subsection (8)(a)(vii) is guilty of a class A misdemeanor.

Section 4. Section **53-3-216** is amended to read:

53-3-216. Change of address -- Duty of licensee to notify division within 10 days -- Change of name -- Proof necessary -- Method of giving notice by division.

(1) If a person, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to him, the person shall within 10 days of moving, notify the division in a manner specified by the division of his new address and the number of any license certificate held by him.

(2) If a person requests to change the surname on the applicant's license, the division shall issue a substitute license with the new name upon receiving an application and fee for a duplicate license and any of the following proofs of the applicant's full legal name:

(a) an original or certified copy of the applicant's marriage certificate;

(b) a certified copy of a court order under Title 42, Chapter 1, Change of Name, showing the name change;

(c) an original or certified copy of a birth certificate issued by a government agency;

(d) a certified copy of a divorce decree or annulment granted the applicant that specifies the name change requested; or

(e) a certified copy of a divorce decree that does not specify the name change requested together with:

(i) an original or certified copy of the applicant's birth certificate;

(ii) the applicant's marriage license;

(iii) a driver license record showing use of a maiden name; or

(iv) other documentation the division finds acceptable.

(3) (a) Except as provided in Subsection (3)(c), if a person has applied for and received a license certificate and is currently required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry:

(i) the person's original license or renewal to an original license expires on the next birth date of the licensee beginning on July 1, 2006;

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(ii) the person shall surrender the person's license to the division on or before the licensee's next birth date beginning on July 1, 2006; and

(iii) the person may apply for a license certificate with an expiration date identified in Subsection 53-3-205(7)(h) by:

(A) furnishing proper documentation to the division as provided in Section 53-3-205; and

(B) paying the fee for a license required under Section 53-3-105.

(b) Except as provided in Subsection (3)(c), if a person has applied for and received a license certificate and is subsequently convicted of any offense listed in Subsection ~~[77-27-21.5(1)(n)]~~ 77-41-102(14), the person shall surrender the license certificate to the division on the person's next birth date following the conviction and may apply for a license certificate with an expiration date identified in Subsection 53-3-205(7)(h) by:

(i) furnishing proper documentation to the division as provided in Section 53-3-205; and

(ii) paying the fee for a license required under Section 53-3-105.

(c) A person who is unable to comply with the provisions of Subsection (3)(a) or (3)(b) because the person is in the custody of the Department of Corrections or the Division of Juvenile Justice Services, confined in a correctional facility not operated by or under contract with the Department of Corrections, or committed to a state mental facility, shall comply with the provisions of Subsection (3)(a) or (b) within 10 days of being released from confinement.

(4) (a) If the division is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, the notice shall, unless otherwise prescribed, be given by:

(i) personal delivery to the person to be notified; or

(ii) deposit in the United States mail with postage prepaid, addressed to the person at his address as shown by the records of the division.

(b) The giving of notice by mail is complete upon the expiration of four days after the deposit of the notice.

(c) Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the division or affidavit of any person older than 18 years of age, naming the person to whom the notice was given and specifying the time, place, and manner of

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giving the notice.

(5) The division may use state mailing or United States Postal Service information to:

(a) verify an address on an application or on records of the division; and

(b) correct mailing addresses in the division's records.

(6) (a) A violation of the provisions of Subsection (1) is an infraction.

(b) A person who knowingly fails to surrender a license certificate under Subsection

(3) is guilty of a class A misdemeanor.

Section 5. Section **53-3-413** is amended to read:

53-3-413. Issuance of CDL by division -- Driving record -- Expiration date -- Renewal -- Hazardous materials provision.

(1) Before the division may grant a CDL, the division shall obtain the driving record information regarding the applicant through the CDLIS, the NDR, and from each state where the applicant has been licensed.

(2) The division shall notify the CDLIS and provide all information required to ensure identification of the CDL holder within 10 days after:

(a) issuing a CDL following application for an original, renewal, transfer, or upgrade of the CDL; or

(b) any change is made to the identifying information of a CDL holder.

(3) (a) The expiration date for a CDL is the birth date of the holder in the fifth year following the year of issuance of the CDL.

(b) A limited-term CDL expires on:

(i) the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided in Subsection (3)(a), whichever is sooner; or

(ii) on the birth date of the applicant in the first year following the year that the limited-term CDL was issued if there is no definite end to the individual's period of authorized stay.

(c) An original CDL or a renewal to an original CDL expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.

(d) A CDL held by a person ordered to active duty and stationed outside Utah in any of

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the armed forces of the United States, which expires during the time period the person is stationed outside of the state, is valid until 90 days after the person has been discharged or has left the service, unless:

(i) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(ii) the licensee updates the information or photograph on the license certificate.

(4) (a) The applicant for a renewal of a CDL shall complete the application form required by Section 53-3-410 and provide updated information and required certification.

(b) In addition to the requirements under Subsection (4)(a), the applicant for a renewal of a limited-term CDL shall present documentary evidence that the status by which the individual originally qualified for the limited-term CDL has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

(5) The division shall distinguish a limited-term CDL by clearly indicating on the document:

(a) that it is temporary; and

(b) its expiration date.

(6) (a) The division may not issue a hazardous materials endorsement on a CDL unless the applicant meets the security threat assessment standards of the federal Transportation Security Administration.

(b) The division shall revoke the hazardous materials endorsement on a CDL upon receiving notice from the federal Transportation Security Administration that the person holding a hazardous materials endorsement does not meet Transportation Security Administration security threat assessment standards.

(c) To obtain an original hazardous materials endorsement or retain a hazardous materials endorsement upon CDL renewal or transfer, the applicant must take and pass the knowledge test for hazardous materials endorsement in addition to any other testing required by the division.

(7) Unless otherwise provided, the provisions, requirements, classes, endorsements, fees, restrictions, and sanctions under this code apply to a limited-term CDL in the same way as a CDL issued under this chapter.

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Section 6. Section **53-3-804** is amended to read:

53-3-804. Application for identification card -- Required information -- Release of anatomical gift information.

(1) To apply for an identification card or limited-term identification card, the applicant shall:

- (a) be a Utah resident;
- (b) have a Utah residence address; and
- (c) appear in person at any license examining station.

(2) The applicant shall provide the following information to the division:

(a) true and full legal name and Utah residence address;

(b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other satisfactory evidence of birth, which shall be attached to the application;

- (c) (i) Social Security number; or
- (ii) written proof that the applicant is ineligible to receive a Social Security number;
- (d) place of birth;
- (e) height and weight;
- (f) color of eyes and hair;
- (g) signature;
- (h) photograph;
- (i) evidence of the applicant's lawful presence in the United States by providing

documentary evidence:

- (i) that a person is:
 - (A) a United States citizen;
 - (B) a United States national; or
 - (C) a legal permanent resident alien; or
- (ii) of the applicant's:
 - (A) unexpired immigrant or nonimmigrant visa status for admission into the United States;
 - (B) pending or approved application for asylum in the United States;
 - (C) admission into the United States as a refugee;
 - (D) pending or approved application for temporary protected status in the United States;

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States;

(E) approved deferred action status;

(F) pending application for adjustment of status to legal permanent resident or conditional resident; or

(G) conditional permanent resident alien status;

(j) an indication whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act;

(k) an indication whether the applicant is required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry; and

(l) an indication whether the applicant is a veteran of the United States military, verification that the applicant has been honorably discharged from the United States military, and an indication whether the applicant does or does not authorize sharing the information with the state Department of Veterans' Affairs.

(3) The requirements of Section 53-3-234 apply to this section for each person, age 16 and older, applying for an identification card. Refusal to consent to the release of information shall result in the denial of the identification card.

(4) A person who knowingly fails to provide the information required under Subsection (2)(k) is guilty of a class A misdemeanor.

Section 7. Section **53-3-806.5** is amended to read:

53-3-806.5. Identification card required if sex offender does not have driver license.

(1) (a) If a person is required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, and the person does not hold a current driver license in compliance with Section 53-3-205, the person shall obtain an identification card.

(b) The person shall maintain a current identification card during any time the person is required to register as a sex offender and the person does not hold a valid driver license.

(2) Failure to maintain a current identification card as required under Subsection (1) on and after April 30, 2007 is a class A misdemeanor for each month of violation of Subsection (1).

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Section 8. Section **53-3-807** is amended to read:

53-3-807. Expiration -- Address and name change -- Extension for a person with a disability.

(1) (a) An identification card issued on or after July 1, 2006, expires on the birth date of the applicant in the fifth year following the issuance of the identification card.

(b) A limited-term identification card expires on:

(i) the expiration date of the period of time of the individual's authorized stay in the United States or on the birth date of the applicant in the fifth year following the issuance of the limited-term identification card, whichever is sooner; or

(ii) on the birth date of the applicant in the first year following the year that the limited-term identification card was issued if there is no definite end to the individual's period of authorized stay.

(2) If a person has applied for and received an identification card and subsequently moves from the address shown on the application or on the card, the person shall within 10 days notify the division in a manner specified by the division of the person's new address.

(3) If a person has applied for and received an identification card and subsequently changes the person's name under Title 42, Chapter 1, Change of Name, the person:

(a) shall surrender the card to the division; and

(b) may apply for a new card in the person's new name by:

(i) furnishing proper documentation to the division as provided in Section 53-3-804;

and

(ii) paying the fee required under Section 53-3-105.

(4) (a) Except as provided in Subsection (4)(c), if a person has applied for and received an identification card and is currently required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry:

(i) the person's identification card expires annually on the next birth date of the cardholder, on and after July 1, 2006;

(ii) the person shall surrender the person's identification card to the division on or before the cardholder's next birth date beginning on July 1, 2006; and

(iii) the person may apply for an identification card with an expiration date identified in Subsection (8) by:

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(A) furnishing proper documentation to the division as provided in Section 53-3-804;
and

(B) paying the fee for an identification card required under Section 53-3-105.

(b) Except as provided in Subsection (4)(c), if a person has applied for and received an identification card and is subsequently convicted of any offense listed in Subsection ~~[77-27-21.5(1)(n)]~~ 77-41-102(14), the person shall surrender the card to the division on the person's next birth date following the conviction and may apply for a new card with an expiration date identified in Subsection (8) by:

(i) furnishing proper documentation to the division as provided in Section 53-3-804;
and

(ii) paying the fee required under Section 53-3-105.

(c) A person who is unable to comply with the provisions of Subsection (4)(a) or (4)(b) because the person is in the custody of the Department of Corrections or Division of Juvenile Justice Services, confined in a correctional facility not operated by or under contract with the Department of Corrections, or committed to a state mental facility, shall comply with the provisions of Subsection (4)(a) or (b) within 10 days of being released from confinement.

(5) A person older than 21 years of age with a disability, as defined under the Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on an identification card for five years if the person with a disability or an agent of the person with a disability:

(a) requests that the division send the application form to obtain the extension or requests an application form in person at the division's offices;

(b) completes the application;

(c) certifies that the extension is for a person 21 years of age or older with a disability;
and

(d) returns the application to the division together with the identification card fee required under Section 53-3-105.

(6) (a) (i) An identification card may only be extended once, except as prohibited under Subsection (6)(b).

(ii) After an extension an application for an identification card must be applied for in person at the division's offices.

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(b) An identification card issued to a person required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, may not be extended.

(7) An identification card issued prior to July 1, 2006 to a person 65 years of age or older does not expire, but continues in effect until the death of that person.

(8) Notwithstanding the provisions of this section, an identification card expires on the birth date of the applicant in the first year following the year that the identification card was issued if the applicant is required to register as a sex offender [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.

(9) A person who knowingly fails to surrender an identification card under Subsection (4) is guilty of a class A misdemeanor.

Section 9. Section **53-10-404** is amended to read:

53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.

(1) As used in this section, "person" refers to any person as described under Section 53-10-403.

(2) (a) A person under Section 53-10-403 or any person added to the sex offender register as defined in Section [~~77-27-21.5~~] 77-41-102 shall provide a DNA specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA specimen unless:

(i) the person was booked under Section 53-10-403 and is not required to reimburse the agency under Section 53-10-404.5; or

(ii) the agency determines the person lacks the ability to pay.

(b) (i) (A) The responsible agencies shall establish guidelines and procedures for determining if the person is able to pay the fee.

(B) An agency's implementation of Subsection (2)(b)(ii) meets an agency's obligation to determine an inmate's ability to pay.

(ii) An agency's guidelines and procedures may provide for the assessment of \$150 on the inmate's county trust fund account and may allow a negative balance in the account until the \$150 is paid in full.

(3) (a) (i) All fees collected under Subsection (2) shall be deposited in the DNA Specimen Restricted Account created in Section 53-10-407, except that the agency collecting

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the fee may retain not more than \$25 per individual specimen for the costs of obtaining the saliva DNA specimen.

(ii) The agency collecting the \$150 fee may not retain from each separate fee more than \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

(b) The responsible agency shall determine the method of collecting the DNA specimen. Unless the responsible agency determines there are substantial reasons for using a different method of collection or the person refuses to cooperate with the collection, the preferred method of collection shall be obtaining a saliva specimen.

(c) The responsible agency may use reasonable force, as established by its guidelines and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

(d) If the judgment places the person on probation, the person shall submit to the obtaining of a DNA specimen as a condition of the probation.

(e) (i) Under this section a person is required to provide one DNA specimen and pay the collection fee as required under this section.

(ii) The person shall provide an additional DNA specimen only if the DNA specimen previously provided is not adequate for analysis.

(iii) The collection fee is not imposed for a second or subsequent DNA specimen collected under this section.

(f) Any agency that is authorized to obtain a DNA specimen under this part may collect any outstanding amount of a fee due under this section from any person who owes any portion of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section 53-10-407.

(4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as possible and transferred to the Department of Public Safety:

(i) after a conviction or a finding of jurisdiction by the juvenile court; and

(ii) on and after January 1, 2011, after the booking of a person for any offense under Subsection 53-10-403(1)(c).

(b) If notified by the Department of Public Safety that a DNA specimen is not adequate for analysis, the agency shall, as soon as possible:

(i) obtain and transmit an additional DNA specimen; or

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(ii) request that another agency that has direct access to the person and that is authorized to collect DNA specimens under this section collect the necessary second DNA specimen and transmit it to the Department of Public Safety.

(c) Each agency that is responsible for collecting DNA specimens under this section shall establish:

(i) a tracking procedure to record the handling and transfer of each DNA specimen it obtains; and

(ii) a procedure to account for the management of all fees it collects under this section.

(5) (a) The Department of Corrections is the responsible agency whenever the person is committed to the custody of or is under the supervision of the Department of Corrections.

(b) The juvenile court is the responsible agency regarding a minor under Subsection 53-10-403(3), but if the minor has been committed to the legal custody of the Division of Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the minor has not previously been obtained by the juvenile court under Section 78A-6-117.

(c) The sheriff operating a county jail is the responsible agency regarding the collection of DNA specimens from persons who:

(i) have pled guilty to or have been convicted of an offense listed under Subsection 53-10-403(2) but who have not been committed to the custody of or are not under the supervision of the Department of Corrections;

(ii) are incarcerated in the county jail:

(A) as a condition of probation for a felony offense; or

(B) for a misdemeanor offense for which collection of a DNA specimen is required;

and

(iii) on and after January 1, 2011, are booked at the county jail for any offense under Subsection 53-10-403(1)(c).

(d) Each agency required to collect a DNA specimen under this section shall:

(i) designate employees to obtain the saliva DNA specimens required under this section; and

(ii) ensure that employees designated to collect the DNA specimens receive appropriate training and that the specimens are obtained in accordance with generally accepted protocol.

(6) (a) As used in this Subsection (6), "department" means the Department of

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Corrections.

(b) Priority of obtaining DNA specimens by the department is:

(i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody of or under the supervision of the department before these persons are released from incarceration, parole, or probation, if their release date is prior to that of persons under Subsections (6)(b)(ii), but in no case later than July 1, 2004; and

(ii) second, the department shall obtain DNA specimens from persons who are committed to the custody of the department or who are placed under the supervision of the department after July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release from incarceration if the person is imprisoned, or prior to the termination of probation if the person is placed on probation.

(c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii) is:

(i) first, persons on probation;

(ii) second, persons on parole; and

(iii) third, incarcerated persons.

(d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA specimens from persons in the custody of or under the supervision of the Department of Corrections as of July 1, 2002, prior to their release.

(7) (a) As used in this Subsection (7):

(i) "Court" means the juvenile court.

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

(b) Priority of obtaining DNA specimens by the court from minors under Section 53-10-403 who are under the jurisdiction of the court but who are not in the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the court's jurisdiction, prior to termination of the court's jurisdiction over these minors; and

(ii) second, to obtain specimens from minors who are found to be within the court's jurisdiction after July 1, 2002, within 120 days of the minor's being found to be within the court's jurisdiction, if possible, but not later than prior to termination of the court's jurisdiction

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over the minor.

(c) Priority of obtaining DNA specimens by the division from minors under Section 53-10-403 who are committed to the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's legal custody and who have not previously provided a DNA specimen under this section, prior to termination of the division's legal custody of these minors; and

(ii) second, to obtain specimens from minors who are placed in the legal custody of the division after July 1, 2002, within 120 days of the minor's being placed in the custody of the division, if possible, but not later than prior to termination of the court's jurisdiction over the minor.

(8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish procedures for obtaining saliva DNA specimens, and shall provide training for employees designated to collect saliva DNA specimens.

(b) (i) The department may designate correctional officers, including those employed by the adult probation and parole section of the department, to obtain the saliva DNA specimens required under this section.

(ii) The department shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

Section 10. Section **62A-7-104** is amended to read:

62A-7-104. Division responsibilities.

(1) The division is responsible for all youth offenders committed to it by juvenile courts for secure confinement or supervision and treatment in the community.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all youth offenders committed to the division;

(b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and

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(d) establish observation and assessment programs necessary to serve youth offenders committed by the juvenile court for short-term observation under Subsection 78A-6-117(2)(e), and whenever possible, conduct the programs in settings separate and distinct from secure facilities for youth offenders.

(3) The division shall place youth offenders committed to it in the most appropriate program for supervision and treatment.

(4) In any order committing a youth offender to the division, the juvenile court shall specify whether the youth offender is being committed for secure confinement or placement in a community-based program. The division shall place the youth offender in the most appropriate program within the category specified by the court.

(5) The division shall employ staff necessary to:

(a) supervise and control youth offenders in secure facilities or in the community;

(b) supervise and coordinate treatment of youth offenders committed to the division for placement in community-based programs; and

(c) control and supervise nonadjudicated youth placed with the division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules promulgated by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(7) The division shall establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for youth offenders placed in the program; and

(c) provide counseling to youth offenders.

(8) The division shall establish minimum standards for the operation of all private

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residential and nonresidential rehabilitation facilities which provide services to juveniles who have committed a delinquent act, in this state or in any other state.

(9) In accordance with policies established by the board, the division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10) (a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register with the Department of Corrections any person who:

(a) has been adjudicated delinquent based on an offense listed in Subsection

~~[77-27-21.5(1)(n)(i)]~~ 77-41-102(14)(a);

(b) has been committed to the division for secure confinement; and

(c) remains in the division's custody 30 days prior to the person's 21st birthday.

Section 11. Section **63G-2-302** is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

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- (A) the commission's summary data report that is required under legislative rule; and
- (B) any other document that is classified as public under legislative rule; or
- (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;
- (e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
 - (i) if prior to the meeting, the chair of the committee determines release of the records:
 - (A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
 - (B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
 - (ii) after the meeting, if the meeting was closed to the public;
- (f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;
- (g) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;
- (h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- (i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;
- (j) a record that:
 - (i) contains information about an individual;
 - (ii) is voluntarily provided by the individual; and
 - (iii) goes into an electronic database that:
 - (A) is designated by and administered under the authority of the Chief Information Officer; and
 - (B) acts as a repository of information about the individual that can be electronically

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retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

(ii) Subsection 31A-23a-302(3); or

(iii) Subsection 31A-26-210(3);

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(m) information provided by an offender that is:

(i) required by the registration requirements of [~~Section 77-27-21.5~~] Title 77, Chapter 41, Sex and Kidnap Offender Registry; and

(ii) not required to be made available to the public under Subsection [~~77-27-21.5(27)~~] 77-41-110(4);

(n) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(o) electronic toll collection customer account information received or collected under Section 72-6-118, including contact and payment information and customer travel data[-];

(p) an email address provided by a military or overseas voter under Section 20A-16-501; and

(q) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

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(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 12. Section **76-3-402** is amended to read:

76-3-402. Conviction of lower degree of offense -- Procedure and limitations.

(1) If at the time of sentencing the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, and after having given any victims present at the sentencing and the prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute, the court may enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

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(2) If the court suspends the execution of the sentence and places the defendant on probation, whether or not the defendant is committed to jail as a condition of probation, the court may enter a judgment of conviction for the next lower degree of offense:

- (a) after the defendant has been successfully discharged from probation;
- (b) upon motion and notice to the prosecuting attorney;
- (c) after reasonable effort has been made by the prosecuting attorney to provide notice to any victims;
- (d) after a hearing if requested by either party under Subsection (2)(c); and
- (e) if the court finds entering a judgment of conviction for the next lower degree of offense is in the interest of justice.

(3) (a) An offense may be reduced only one degree under this section, whether the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees.

(b) In no case may an offense be reduced under this section by more than two degrees.

(4) This section does not preclude any person from obtaining or being granted an expungement of his record as provided by law.

(5) The court may not enter judgment for a conviction for a lower degree of offense if:

- (a) the reduction is specifically precluded by law; or
- (b) if any unpaid balance remains on court ordered restitution for the offense for which the reduction is sought.

(6) When the court enters judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.

(7) (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a sex offender until the registration requirements under ~~[Section 77-27-21.5]~~ Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

(b) A person required to register as a sex offender for the person's lifetime under Subsection ~~[77-27-21.5(12)(c)]~~ 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a sex offender.

(8) As used in this section, "next lower degree of offense" includes an offense regarding which:

- (a) a statutory enhancement is charged in the information or indictment that would

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increase either the maximum or the minimum sentence; and

(b) the court removes the statutory enhancement pursuant to this section.

Section 13. Section **77-27-21.7** is amended to read:

77-27-21.7. Sex offender restrictions.

(1) As used in this section:

(a) "Protected area" means the premises occupied by:

(i) any licensed day care or preschool facility;

(ii) a swimming pool that is open to the public;

(iii) a public or private primary or secondary school that is not on the grounds of a correctional facility;

(iv) a community park that is open to the public; and

(v) a playground that is open to the public, including those areas designed to provide children space, recreational equipment, or other amenities intended to allow children to engage in physical activity.

(b) (i) Except under Subsection (1)(b)(ii), "protected area" also includes any area that is 1,000 feet or less from the residence of a victim of the sex offender's offense under Subsection (1)(c) if:

(A) the sex offender is on probation or parole for an offense under Subsection (1)(c);

(B) the victim or the victim's parent or guardian has advised the Department of Corrections that the victim desires that the sex offender be restricted from the area under this Subsection (1)(b)(i) and authorizes the Department of Corrections to advise the sex offender of the area where the victim resides for purposes of this Subsection (1)(b); and

(C) the Department of Corrections has notified the sex offender in writing that the sex offender is prohibited from being in the protected area under Subsection (1)(b)(i) and has also provided a description of the location of the protected area to the sex offender.

(ii) "Protected area" under Subsection (1)(b)(i) does not apply to the residence and area surrounding the residence of a victim if:

(A) the victim is a member of the immediate family of the sex offender; and

(B) the terms of the sex offender's agreement of probation or parole allow the sex offender to reside in the same residence as the victim.

(c) "Sex offender" means an adult or juvenile who is required to register [~~under Section~~

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~~77-27-21.5]~~ in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, due to a conviction for any offense that is committed against a person younger than 18 years of age.

(2) It is a class A misdemeanor for any sex offender to be in any protected area on foot or in or on any vehicle, including vehicles that are not motorized, except for:

(a) those specific periods of time when the sex offender must be present within a protected area in order to carry out necessary parental responsibilities;

(b) when the protected area is a school building:

(i) under Subsection (1)(a)(iii);

(ii) being opened for or being used for a public activity; and

(iii) not being used for any school-related function that involves persons younger than 18 years of age; or

(c) when the protected area is a licensed day care or preschool facility:

(i) under Subsection (1)(a)(i); and

(ii) located within a building that is open to the public for purposes, services, or functions that are operated separately from the day care or preschool facility located in the building, except that the sex offender may not be in any part of the building occupied by the day care or preschool facility.

Section 14. Section **77-27-21.8** is amended to read:

77-27-21.8. Sex offender in presence of a child -- Definitions -- Penalties.

(1) As used in this section:

(a) "Accompany" means:

(i) to be in the presence of an individual; and

(ii) to move or travel with that individual from one location to another, whether outdoors, indoors, or in or on any type of vehicle.

(b) "Child" means an individual younger than 14 years of age.

(2) A sex offender subject to registration [~~under Section 77-27-21.5]~~ in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an offense committed or attempted to be committed against a child younger than 14 years of age is guilty of a class A misdemeanor if the sex offender requests, invites, or solicits a child to accompany the sex offender, under circumstances that do not constitute an attempt to violate Section 76-5-301.1, child kidnapping, unless:

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(a) (i) the sex offender, prior to accompanying the child:

(A) verbally advises the child's parent or legal guardian that the sex offender is on the state sex offender registry and is required by state law to obtain written permission in order for the sex offender to accompany the child; and

(B) requests that the child's parent or legal guardian provide written authorization for the sex offender to accompany the child, including the specific dates and locations;

(ii) the child's parent or legal guardian has provided to the sex offender written authorization, including the specific dates and locations, for the sex offender to accompany the child; and

(iii) the sex offender has possession of the written authorization and is accompanying the child only at the dates and locations specified in the authorization;

(b) the child's parent or guardian has verbally authorized the sex offender to accompany the child either in the child's residence or on property appurtenant to the child's residence, but in no other locations; or

(c) the child is the natural child of the sex offender, and the offender is not prohibited by any court order, or probation or parole provision, from contact with the child.

(3) (a) A sex offender convicted of a violation of Subsection (2) is subject to registration [~~under Section 77-27-21.5~~] in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, for an additional five years subsequent to the required registration under Section 77-27-21.5.

(b) The period of additional registration imposed under Subsection (3)(a) is also in addition to any period of registration imposed under Subsection [~~77-27-21.5(16)(c)~~] 77-41-107(3) for failure to comply with registration requirements.

(4) It is not a defense to a prosecution under this section that the defendant mistakenly believed the individual to be 14 years of age or older at the time of the offense or was unaware of the individual's true age.

(5) This section does not apply if a sex offender is acting to rescue a child who is in an emergency and life-threatening situation.

Section 15. Section **77-40-105** is amended to read:

77-40-105. Eligibility for expungement of conviction -- Requirements.

(1) A person convicted of a crime may apply to the bureau for a certificate of eligibility

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to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2); or

(vi) a registerable sex offense as defined in Subsection [~~77-27-21.5(1)(n)~~]

~~77-41-102(14)~~;

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a criminal record is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony violation of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of a class A misdemeanor;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions, each of which is contained in a separate criminal

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episode;

(b) any combination of three or more convictions that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions of any degree whether misdemeanor or felony, excluding infractions, each of which is contained in a separate criminal episode.

(5) If the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to a certificate of eligibility for all pardoned crimes.

Section 16. Section **77-41-101** is enacted to read:

CHAPTER 41. SEX AND KIDNAP OFFENDER REGISTRY

77-41-101. Title.

This chapter is known as the "Sex and Kidnap Offender Registry."

Section 17. Section **77-41-102** is enacted to read:

77-41-102. Definitions.

As used in this chapter:

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

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

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

(4) "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.

(5) "Indian Country" means:

(a) 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;

(b) 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

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

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

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

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

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

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

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

(v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (7)(a)(i) through (iv);

(b) 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 (7)(a) and who is:

(i) a Utah resident; or

(ii) 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;

(c) (i) 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

(ii) 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;

(d) 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 (7), 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;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (7); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (7)(a) 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.

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

(9) "Offender" means a kidnap offender as defined in Subsection (7) or a sex offender as defined in Subsection (14).

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

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

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

(11) "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.

(12) "Register" means to comply with the requirements of this ~~{section}~~chapter and administrative rules of the department made under this ~~{section}~~chapter.

(13) "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.

(14) "Sex offender" means any person:

(a) convicted in this state of:

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

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

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

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

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

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

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

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

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

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

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

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- (xii) Section 76-5-404, forcible sexual abuse;
- (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- (xiv) Section 76-5-405, aggravated sexual assault;
- (xv) Section 76-5-412, custodial sexual relations, when the person in custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;
- (xvi) Section 76-5b-201, sexual exploitation of a minor;
- (xvii) Section 76-7-102, incest;
- (xviii) Subsection 76-9-702(1), lewdness, if the person has been convicted of the offense four or more times;
- (xix) Subsection 76-9-702(3), sexual battery, if the person has been convicted of the offense four or more times;
- (xx) 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;
- (xxi) Section 76-9-702.5, lewdness involving a child;
- (xxii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- (xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or
- (xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (14)(a);
 - (b) 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 (14)(a) and who is:
 - (i) a Utah resident; or
 - (ii) 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;
 - (c) (i) 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
 - (ii) 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;
 - (d) 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 (14)(a), or any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required

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to register in the person's jurisdiction of residence;

(e) 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 (14)(a); or

(f) who is adjudicated delinquent based on one or more offenses listed in Subsection (14)(a) 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.

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

Section 18. Section **77-41-103** is enacted to read:

77-41-103. Department duties.

(1) 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 77-41-110(4) available to the public; and

(c) share information provided by an offender under this ~~{section}~~chapter that may not be made available to the public under Subsection 77-41-110(4), but only:

(i) for the purposes under this ~~{section}~~chapter; or

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

(2) 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 77-41-102(7) or (14), within three business days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-41-102(7) or (14), within five business days.

(3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102(7) or (14), the convicting court shall within three business days forward a copy of the judgment and sentence to the department.

(4) The department shall:

(a) provide the following additional information when available:

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

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(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.

Section 19. Section **77-41-104** is enacted to read:

77-41-104. Registration of offenders -- Department and agency requirements.

(1) 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.

(2) 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.

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

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

(5) (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}~~chapter, 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 (5)(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}~~chapter 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.

(6) 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}~~chapter during the period of registration required in Subsection 77-41-105(3), 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

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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.

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

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

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

(8) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections 77-41-103(4) and 77-41-105(7).

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

Section 20. Section **77-41-105** is enacted to read:

77-41-105. Registration of offenders -- Offender responsibilities.

(1) An offender convicted by any other jurisdiction is required to register under Subsection (3) and Subsection 77-41-102(7) or (14). The offender shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(2) (a) An offender required to register under Subsection 77-41-102(7) or (14) who is under supervision by the department shall register with Division of Adult Probation and Parole.

(b) An offender required to register under Subsection 77-41-102(7) or (14) 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.

(3) (a) Except as provided in Subsections (3)(b)~~and~~, (c), ~~Subsection 77-41-105~~ and (4), and Section 77-41-106, 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 ~~77-41-105~~(7).

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(b) Except as provided in Subsection ~~{77-41-105}~~(4) and Section 77-41-106, an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-41-102(7)(a) or (14)(a), 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 (3)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (3)(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 (3)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of any of the offenses listed in Section 77-41-106 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 ~~{77-41-105}~~(7).

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

(4) Notwithstanding Subsection ~~{77-41-105}~~(3) and Section 77-41-106, 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.

(5) An offender who is required to register under Subsection (3) 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.

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

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(7) 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.

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(8) 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 77-41-105(3)(c).

(9) Notwithstanding Subsections 77-41-103(1)(c) and 77-41-105(7)(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.

Section 21. Section **77-41-106** is enacted to read:

77-41-106. Registerable offenses.

Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

(1) any offense listed in Subsection 77-41-102(7) or (14) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-1(7) or (14) or has previously been required to register as a sex offender for an offense committed as a juvenile;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 22. Section **77-41-107** is enacted to read:

77-41-107. Penalties.

(1) An offender who knowingly fails to register under this ~~{section}~~ chapter or provides false or incomplete information is guilty of:

(a) 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:

(i) 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 77-41-102(7)(a) or (14)(a); or

(ii) the offender is required to register for the offender's lifetime under Subsection 77-41-105(3)(c); or

(b) 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 77-41-102(7)(a) or (14)(a).

(2) Neither the court nor the Board of Pardons and Parole may release a person who violates this ~~{section}~~ chapter from serving the term required under Subsection (1). This Subsection (2) supersedes any other provision of the law contrary to this ~~{section}~~ chapter.

(3) 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}~~ chapter.

Section 23. Section **77-41-108** is enacted to read:

77-41-108. Classification of information.

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Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, information under Subsection 77-41-103(4) that is collected and released under Subsection 77-41-110(4) is public information, unless otherwise restricted under Subsection 77-41-103(1).

Section 24. Section **77-41-109** is enacted to read:

77-41-109. Miscellaneous provisions.

(1) (a) If an offender is to be temporarily sent on any assignment 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 (1) does not apply to any person temporarily released under guard from the institution in which the person is confined.

(2) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, a person convicted of any offense listed in Subsection 77-41-102(7) or (14) is not relieved from the responsibility to register as required under this ~~section~~ chapter.

Section 25. Section **77-41-110** is enacted to read:

77-41-110. Sex offender and kidnap offender registry -- Department to maintain.

(1) 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.

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

(3) 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.

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(4) 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 77-41-102(7) and (14) that the offender has been convicted of or for which the offender has been adjudicated delinquent in juvenile court.

(5) 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}~~chapter and will be presumed to have acted in good faith by reporting information.

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

Section 26. Section **77-41-111** is enacted to read:

77-41-111. Fees.

(1) Each offender required to register under Section 77-41-105 shall, in the month of the offender's birth:

(a) pay to the department an annual fee of \$100 each year the offender is subject to the registration requirements of this ~~{section}~~chapter; and

(b) 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

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providing registration.

(2) Notwithstanding Subsection (1), an offender who is confined in a secure facility or in a state mental hospital is not required to pay the annual fee.

(3) The department shall deposit fees ~~{under}~~ collected in accordance with this ~~{section}~~ chapter in the General Fund as a dedicated credit, to be used by the department for maintaining the offender registry under this ~~{section}~~ chapter and monitoring offender registration compliance, including the costs of:

(a) data entry;

(b) processing registration packets;

(c) updating registry information;

(d) ensuring offender compliance with registration requirements under this ~~{section}~~ chapter; and

(e) apprehending offenders who are in violation of the offender registration requirements under this ~~{section}~~ chapter.

Section 27. Repealer.

This bill repeals:

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

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Legislative Review Note

~~as of 10-20-11 2:27 PM~~

~~Office of Legislative Research and General Counsel}~~