

**Representative Derrin R. Owens** proposes the following substitute bill:

**CHILD ABUSE OFFENDER REGISTRY**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derrin R. Owens**

Senate Sponsor: Ralph Okerlund

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**LONG TITLE**

**General Description:**

This bill creates the Child Abuse Offender Registry to be administered by the Department of Corrections.

**Highlighted Provisions:**

This bill:

- ▶ creates the Child Abuse Offender Registry;
- ▶ requires persons convicted of felony child abuse ~~§~~ ~~[-child endangerment,]~~ ~~←§~~ and human trafficking to register;
- ▶ specifies requirements for registration;
- ▶ sets penalties for failure to register; and
- ▶ places the registry within the Department of Corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-3-806.5**, as last amended by Laws of Utah 2012, Chapter 145



- 26 **62A-7-104**, as last amended by Laws of Utah 2015, Chapter 210
- 27 **63G-2-302**, as last amended by Laws of Utah 2016, Chapter 410
- 28 **76-1-201**, as last amended by Laws of Utah 2014, Chapter 105
- 29 **76-1-202**, as last amended by Laws of Utah 2014, Chapter 105
- 30 **76-3-402**, as last amended by Laws of Utah 2012, Chapter 145
- 31 **77-40-105**, as last amended by Laws of Utah 2016, Chapter 185

32 ENACTS:

- 33 **77-43-101**, Utah Code Annotated 1953
- 34 **77-43-102**, Utah Code Annotated 1953
- 35 **77-43-103**, Utah Code Annotated 1953
- 36 **77-43-104**, Utah Code Annotated 1953
- 37 **77-43-105**, Utah Code Annotated 1953
- 38 **77-43-106**, Utah Code Annotated 1953
- 39 **77-43-107**, Utah Code Annotated 1953
- 40 **77-43-108**, Utah Code Annotated 1953
- 41 **77-43-109**, Utah Code Annotated 1953

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

44 Section 1. Section **53-3-806.5** is amended to read:

45 **53-3-806.5. Identification card required if offender does not have driver license.**

46 (1) (a) If a person is required to register as a sex offender in accordance with Title 77,  
47 Chapter 41, Sex and Kidnap Offender Registry or as a child abuse offender in accordance with  
48 Title 77, Chapter 43, Child Abuse Registry, and the person does not hold a current driver  
49 license in compliance with Section **53-3-205**, the person shall obtain an identification card.

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

53 (2) Failure to maintain a current identification card as required under Subsection (1) on  
54 and after April 30, 2007 is a class A misdemeanor for each month of violation of Subsection  
55 (1).

56 Section 2. Section **62A-7-104** is amended to read:

57           **62A-7-104. Division responsibilities.**

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

60           (2) The division shall:

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

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

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

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

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

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

77           (5) The division shall employ staff necessary to:

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

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

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

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

88 enforcement agencies for assistance.

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

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

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

96 (c) provide counseling to youth offenders.

97 (8) The division shall establish minimum standards for the operation of all private  
98 residential and nonresidential rehabilitation facilities which provide services to juveniles who  
99 have committed a delinquent act, in this state or in any other state.

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

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

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

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

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

114 (a) has been adjudicated delinquent based on an offense listed in Subsection  
115 [77-41-102\(17\)\(a\)](#) or [77-43-102\(2\)](#);

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

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

118 Section 3. Section **63G-2-302** is amended to read:

- 119           **63G-2-302. Private records.**
- 120           (1) The following records are private:
- 121           (a) records concerning an individual's eligibility for unemployment insurance benefits,
- 122 social services, welfare benefits, or the determination of benefit levels;
- 123           (b) records containing data on individuals describing medical history, diagnosis,
- 124 condition, treatment, evaluation, or similar medical data;
- 125           (c) records of publicly funded libraries that when examined alone or with other records
- 126 identify a patron;
- 127           (d) records received by or generated by or for:
- 128           (i) the Independent Legislative Ethics Commission, except for:
- 129           (A) the commission's summary data report that is required under legislative rule; and
- 130           (B) any other document that is classified as public under legislative rule; or
- 131           (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
- 132 unless the record is classified as public under legislative rule;
- 133           (e) records received by, or generated by or for, the Independent Executive Branch
- 134 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
- 135 of Executive Branch Ethics Complaints;
- 136           (f) records received or generated for a Senate confirmation committee concerning
- 137 character, professional competence, or physical or mental health of an individual:
- 138           (i) if, prior to the meeting, the chair of the committee determines release of the records:
- 139           (A) reasonably could be expected to interfere with the investigation undertaken by the
- 140 committee; or
- 141           (B) would create a danger of depriving a person of a right to a fair proceeding or
- 142 impartial hearing; and
- 143           (ii) after the meeting, if the meeting was closed to the public;
- 144           (g) employment records concerning a current or former employee of, or applicant for
- 145 employment with, a governmental entity that would disclose that individual's home address,
- 146 home telephone number, social security number, insurance coverage, marital status, or payroll
- 147 deductions;
- 148           (h) records or parts of records under Section [63G-2-303](#) that a current or former
- 149 employee identifies as private according to the requirements of that section;

- 150 (i) that part of a record indicating a person's social security number or federal employer  
151 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,  
152 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 153 (j) that part of a voter registration record identifying a voter's:  
154 (i) driver license or identification card number;  
155 (ii) Social Security number, or last four digits of the Social Security number;  
156 (iii) email address; or  
157 (iv) date of birth;
- 158 (k) a voter registration record that is classified as a private record by the lieutenant  
159 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
- 160 (l) a record that:  
161 (i) contains information about an individual;  
162 (ii) is voluntarily provided by the individual; and  
163 (iii) goes into an electronic database that:  
164 (A) is designated by and administered under the authority of the Chief Information  
165 Officer; and  
166 (B) acts as a repository of information about the individual that can be electronically  
167 retrieved and used to facilitate the individual's online interaction with a state agency;
- 168 (m) information provided to the Commissioner of Insurance under:  
169 (i) Subsection 31A-23a-115(2)(a);  
170 (ii) Subsection 31A-23a-302(3); or  
171 (iii) Subsection 31A-26-210(3);
- 172 (n) information obtained through a criminal background check under Title 11, Chapter  
173 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 174 (o) information provided by an offender that is:  
175 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap  
176 Offender Registry or Title 77, Chapter 43, Child Abuse Registry; and  
177 (ii) not required to be made available to the public under Subsection 77-41-110(4) or  
178 77-43-108(4);
- 179 (p) a statement and any supporting documentation filed with the attorney general in  
180 accordance with Section 34-45-107, if the federal law or action supporting the filing involves

181 homeland security;

182 (q) electronic toll collection customer account information received or collected under  
183 Section 72-6-118 and customer information described in Section 17B-2a-815 received or  
184 collected by a public transit district, including contact and payment information and customer  
185 travel data;

186 (r) an email address provided by a military or overseas voter under Section  
187 20A-16-501;

188 (s) a completed military-overseas ballot that is electronically transmitted under Title  
189 20A, Chapter 16, Uniform Military and Overseas Voters Act;

190 (t) records received by or generated by or for the Political Subdivisions Ethics Review  
191 Commission established in Section 11-49-201, except for:

192 (i) the commission's summary data report that is required in Section 11-49-202; and

193 (ii) any other document that is classified as public in accordance with Title 11, Chapter  
194 49, Political Subdivisions Ethics Review Commission;

195 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was  
196 notified of an incident or threat; and

197 (v) a criminal background check or credit history report conducted in accordance with  
198 Section 63A-3-201.

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

200 (a) records concerning a current or former employee of, or applicant for employment  
201 with a governmental entity, including performance evaluations and personal status information  
202 such as race, religion, or disabilities, but not including records that are public under Subsection  
203 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

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

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

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

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

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

211 (d) other records containing data on individuals the disclosure of which constitutes a

212 clearly unwarranted invasion of personal privacy;

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

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

220 (g) audio and video recordings created by a body-worn camera, as defined in Section  
221 77-7a-103, that record sound or images inside a home or residence except for recordings that:

222 (i) depict the commission of an alleged crime;

223 (ii) record any encounter between a law enforcement officer and a person that results in  
224 death or bodily injury, or includes an instance when an officer fires a weapon;

225 (iii) record any encounter that is the subject of a complaint or a legal proceeding  
226 against a law enforcement officer or law enforcement agency;

227 (iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);

228 or

229 (v) have been requested for reclassification as a public record by a subject or  
230 authorized agent of a subject featured in the recording.

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

233 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
234 doctors, or affiliated entities are not private records or controlled records under Section  
235 63G-2-304 when the records are sought:

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

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

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



243 Section 4. Section **76-1-201** is amended to read:

244 **76-1-201. Jurisdiction of offenses.**

245 (1) A person is subject to prosecution in this state for an offense which he commits,  
246 while either within or outside the state, by his own conduct or that of another for which he is  
247 legally accountable, if:

248 (a) the offense is committed either wholly or partly within the state;

249 (b) the conduct outside the state constitutes an attempt to commit an offense within the  
250 state;

251 (c) the conduct outside the state constitutes a conspiracy to commit an offense within  
252 the state and an act in furtherance of the conspiracy occurs in the state; or

253 (d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to  
254 commit in another jurisdiction an offense under the laws of both this state and the other  
255 jurisdiction.

256 (2) An offense is committed partly within this state if either the conduct which is any  
257 element of the offense, or the result which is an element, occurs within this state.

258 (3) In homicide offenses, the "result" is either the physical contact which causes death  
259 or the death itself.

260 (a) If the body of a homicide victim is found within the state, the death shall be  
261 presumed to have occurred within the state.

262 (b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the  
263 defendant proves by clear and convincing evidence that:

264 (i) the result of the homicide did not occur in this state; and

265 (ii) the defendant did not engage in any conduct in this state which is any element of  
266 the offense.

267 (4) (a) An offense which is based on an omission to perform a duty imposed by the law  
268 of this state is committed within the state regardless of the location of the offender at the time  
269 of the omission.

270 (b) For the purpose of establishing venue for a violation of Subsection [77-41-105\(3\)](#)  
271 concerning sex offender registration or Subsection [77-43-105\(3\)](#) for child abuse offender  
272 registration, the offense is considered to be committed:

273 (i) at the most recent registered primary residence of the offender, if the actual location

274 of the offender at the time of the violation is not known; or

275 (ii) at the location of the offender at the time the offender is apprehended.

276 (5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish  
277 jurisdiction.

278 (b) The defendant may challenge jurisdiction by filing a motion before trial stating  
279 which facts exist that deprive the state of jurisdiction.

280 (c) The burden is upon the state to initially establish jurisdiction over the offense by a  
281 preponderance of the evidence by showing under the provisions of Subsections (1) through (4)  
282 that the offense was committed either wholly or partly within the borders of the state.

283 (d) If after the prosecution has met its burden of proof under Subsection (5)(c) the  
284 defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the  
285 burden is upon the defendant to prove by a preponderance of the evidence:

286 (i) any facts claimed; and

287 (ii) why those facts deprive the state of jurisdiction.

288 (6) Facts that deprive the state of jurisdiction or prohibit the state from exercising  
289 jurisdiction include the fact that the:

290 (a) defendant is serving in a position that is entitled to diplomatic immunity from  
291 prosecution and that the defendant's country has not waived that diplomatic immunity;

292 (b) defendant is a member of the armed forces of another country and that the crime  
293 that he is alleged to have committed is one that due to an international agreement, such as a  
294 status of forces agreement between his country and the United States, cedes the exercise of  
295 jurisdiction over him for that offense to his country;

296 (c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101,  
297 and that the Indian tribe has a legal status with the United States or the state that vests  
298 jurisdiction in either tribal or federal courts for certain offenses committed within the exterior  
299 boundaries of a tribal reservation, and that the facts establish that the crime is one that vests  
300 jurisdiction in tribal or federal court; or

301 (d) offense occurred on land that is exclusively within federal jurisdiction.

302 (7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud  
303 Act, involves the use of personal identifying information which is uniquely personal to the  
304 consumer or business victim of that identity fraud and which information is considered to be in

305 lawful possession of the consumer or business victim wherever the consumer or business  
306 victim currently resides or is found.

307 (b) For purposes of Subsection (1)(a), an offense which is based on a violation of  
308 Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the  
309 location of the offender at the time of the offense, if the victim of the identity fraud resides or is  
310 found in this state.

311 (8) The judge shall determine jurisdiction.

312 Section 5. Section **76-1-202** is amended to read:

313 **76-1-202. Venue of actions.**

314 (1) Criminal actions shall be tried in the county, district, or precinct where the offense  
315 is alleged to have been committed. In determining the proper place of trial, the following  
316 provisions shall apply:

317 (a) If the commission of an offense commenced outside the state is consummated  
318 within this state, the offender shall be tried in the county where the offense is consummated.

319 (b) When conduct constituting elements of an offense or results that constitute  
320 elements, whether the conduct or result constituting elements is in itself unlawful, shall occur  
321 in two or more counties, trial of the offense may be held in any of the counties concerned.

322 (c) If a person committing an offense upon the person of another is located in one  
323 county and his victim is located in another county at the time of the commission of the offense,  
324 trial may be held in either county.

325 (d) If a cause of death is inflicted in one county and death ensues in another county, the  
326 offender may be tried in either county.

327 (e) A person who commits an inchoate offense may be tried in any county in which any  
328 act that is an element of the offense, including the agreement in conspiracy, is committed.

329 (f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another  
330 in the planning or commission of an offense in another county, he may be tried for the offense  
331 in either county.

332 (g) When an offense is committed within this state and it cannot be readily determined  
333 in which county or district the offense occurred, the following provisions shall be applicable:

334 (i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft  
335 passing within this state, the offender may be tried in any county through which such railroad

336 car, vehicle, watercraft, or aircraft has passed.

337 (ii) When an offense is committed on any body of water bordering on or within this  
338 state, the offender may be tried in any county adjacent to such body of water. The words "body  
339 of water" shall include but not be limited to any stream, river, lake, or reservoir, whether  
340 natural or man-made.

341 (iii) A person who commits theft may be tried in any county in which he exerts control  
342 over the property affected.

343 (iv) If an offense is committed on or near the boundary of two or more counties, trial of  
344 the offense may be held in any of such counties.

345 (v) For any other offense, trial may be held in the county in which the defendant  
346 resides, or, if he has no fixed residence, in the county in which he is apprehended or to which  
347 he is extradited.

348 (h) A person who commits an offense based on Chapter 6, Part 11, Identity Fraud Act,  
349 may be tried in the county:

350 (i) where the victim's personal identifying information was obtained;

351 (ii) where the defendant used or attempted to use the personally identifying  
352 information;

353 (iii) where the victim of the identity fraud resides or is found; or

354 (iv) if multiple offenses of identity fraud occur in multiple jurisdictions, in any county  
355 where the victim's identity was used or obtained, or where the victim resides or is found.

356 (i) For the purpose of establishing venue for a violation of Subsection [77-41-105\(3\)](#)  
357 concerning sex offender registration or Subsection [77-43-105\(3\)](#) for child abuse offender  
358 registration, the offense is considered to be committed:

359 (i) at the most recent registered primary residence of the offender, if the actual location  
360 of the offender at the time of the violation is not known; or

361 (ii) at the location of the offender at the time the offender is apprehended.

362 (2) All objections of improper place of trial are waived by a defendant unless made  
363 before trial.

364 Section 6. Section **76-3-402** is amended to read:

365 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

366 (1) If at the time of sentencing the court, having regard to the nature and circumstances

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

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

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

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

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

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

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

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

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

394 (7) (a) A person may not obtain a reduction under this section of a conviction that  
395 requires the person to register as a sex offender until the registration requirements under Title  
396 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

397 (b) A person required to register as a sex offender for the person's lifetime under

398 Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or  
399 offenses that require the person to register as a sex offender.

400 (8) (a) A person may not obtain a reduction under this section of a conviction that  
401 requires the person to register as a child abuse offender until the registration requirements  
402 under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

403 (b) A person required to register as a child abuse offender for the person's lifetime  
404 under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for the  
405 offense or offenses that require the person to register as a child abuse offender.

406 [~~8~~] (9) As used in this section, "next lower degree of offense" includes an offense  
407 regarding which:

408 (a) a statutory enhancement is charged in the information or indictment that would  
409 increase either the maximum or the minimum sentence; and

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

411 Section 7. Section 77-40-105 is amended to read:

412 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

413 (1) A person convicted of an offense may apply to the bureau for a certificate of  
414 eligibility to expunge the record of conviction as provided in this section.

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

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

417 (i) a capital felony;

418 (ii) a first degree felony;

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

420 (iv) felony automobile homicide;

421 (v) a felony violation of Subsection 41-6a-501(2); [~~or~~]

422 (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

423 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

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

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

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

429 occurred:

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

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

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

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

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

439 (iii) five years in the case of any class A misdemeanor or a felony drug possession  
440 offense;

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

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

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

446 (a) two or more felony convictions other than for drug possession offenses, each of  
447 which is contained in a separate criminal episode;

448 (b) any combination of three or more convictions other than for drug possession  
449 offenses that include two class A misdemeanor convictions, each of which is contained in a  
450 separate criminal episode;

451 (c) any combination of four or more convictions other than for drug possession  
452 offenses that include three class B misdemeanor convictions, each of which is contained in a  
453 separate criminal episode; or

454 (d) five or more convictions other than for drug possession offenses of any degree  
455 whether misdemeanor or felony, excluding infractions and any traffic offenses, each of which  
456 is contained in a separate criminal episode.

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

460 (a) three or more felony convictions for drug possession offenses, each of which is  
461 contained in a separate criminal episode; or

462 (b) any combination of five or more convictions for drug possession offenses, each of  
463 which is contained in a separate criminal episode.

464 (6) If the petitioner's criminal history contains convictions for both a drug possession  
465 offense and a non drug possession offense arising from the same criminal episode, that criminal  
466 episode shall be counted as provided in Subsection (4) if any non drug possession offense in  
467 that episode:

468 (a) is a felony or class A misdemeanor; or

469 (b) has the same or a longer waiting period under Subsection (3) than any drug  
470 possession offense in that episode.

471 (7) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board  
472 of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned  
473 crimes pursuant to Section [77-27-5.1](#).

474 Section 8. Section **77-43-101** is enacted to read:

475 **CHAPTER 43. CHILD ABUSE OFFENDER REGISTRY**

476 **77-43-101. Title.**

477 (1) This chapter is known as the "Child Abuse Offender Registry."

478 (2) This chapter applies to all child abuse offenders in the custody of the Department of  
479 Corrections or on parole or probation on May 9, 2017, or who enter this state on or after May 9,  
480 2017.

481 Section 9. Section **77-43-102** is enacted to read:

482 **77-43-102. Definitions.**

483 As used in this chapter:

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

485 (2) "Child abuse offender" means any person who:

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

487 (i) Subsection [76-5-109\(2\)\(a\)](#) or (b), child abuse;

488 ~~Ŝ → [(ii) Section [76-5-112.5](#), child endangerment;~~

489 ~~—— [(iii)] (ii) ←Ŝ~~ Section [76-5-308.5](#), human trafficking of a child; or

490 ~~Ŝ → [(iv)] (iii) ←Ŝ~~ attempting, soliciting, or conspiring to commit any felony offense listed in



491 Subsections (2)(a)(i) ~~Ŝ~~ → [through (iii)] or (ii) ←Ŝ ;

492 (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to  
493 commit a crime in another jurisdiction, including any state, federal, or military court, that is  
494 substantially equivalent to the offenses listed in Subsection (2)(a) and who is:

495 (i) a Utah resident; or

496 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of  
497 10 or more days, regardless of whether the offender intends to permanently reside in this state;

498 (c) (i) is required to register as a child abuse offender in any other jurisdiction of  
499 original conviction, who is required to register as a child abuse offender by any state, federal,  
500 or military court, or who would be required to register as a child abuse offender if residing in  
501 the jurisdiction of the conviction regardless of the date of the conviction or any previous  
502 registration requirements; and

503 (ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of  
504 whether the offender intends to permanently reside in this state;

505 (d) is a nonresident regularly employed or working in this state, or who is a student in  
506 this state, and was convicted of one or more offenses listed in Subsection (2)(a), or any  
507 substantially equivalent offense in another jurisdiction, or who, as a result of the conviction, is  
508 required to register in the person's state of residence;

509 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of  
510 one or more offenses listed in Subsection (2)(a); or

511 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (2)(a)  
512 and who has been committed to the division for secure confinement for that offense and  
513 remains in the division's custody 30 days before the person's 21st birthday.

514 (3) "Correctional facility" means the same as that term is defined in Section [64-13-1](#).

515 (4) "Department" means the Department of Corrections.

516 (5) "Division" means the Division of Juvenile Justice Services.

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

520 (7) "Indian Country" means:

521 (a) all land within the limits of any Indian reservation under the jurisdiction of the

522 United States government, regardless of the issuance of any patent, and includes rights-of-way  
523 running through the reservation;

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

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

529 (8) "Jurisdiction" means any state, Indian Country, United States Territory, or any  
530 property under the jurisdiction of the United States Armed Forces, Canada, the United  
531 Kingdom, Australia, or New Zealand.

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

534 (10) "Offender" means a child abuse offender as defined in Subsection (2).

535 (11) "Online identifier" or "Internet identifier":

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

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

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

543 (13) "Register" means to comply with the requirements of this chapter and  
544 administrative rules of the department made under this chapter.

545 (14) "Registration website" means the Child Abuse Offender Notification and  
546 Registration website described in Section [77-43-108](#) and the information on the website.

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

550 (16) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5,  
551 Driving Under the Influence and Reckless Driving.

552 (17) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in

553 any jurisdiction.

554 Section 10. Section **77-43-103** is enacted to read:

555 **77-43-103. Department duties.**

556 (1) The department shall:

557 (a) develop and operate a system to collect, analyze, maintain, and disseminate  
558 information on offenders;

559 (b) make information listed in Subsection [77-43-108\(4\)](#) available to the public; and

560 (c) share information provided by an offender under this chapter that may not be made  
561 available to the public under Subsection [77-43-108\(4\)](#), but only:

562 (i) for the purposes under this chapter; or

563 (ii) in accordance with Section [63G-2-206](#).

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

566 (a) the receipt of a report or complaint of an offense listed in Subsection

567 [77-43-102\(2\)\(a\)](#), within three business days; and

568 (b) the arrest of a person suspected of any of the offenses listed in Subsection

569 [77-43-102\(2\)\(a\)](#), within five business days.

570 (3) Upon convicting and sentencing a person of any of the offenses listed in Subsection  
571 [77-43-102\(2\)\(a\)](#), the convicting court shall within three business days forward a signed copy of  
572 the judgment and sentence to the Child Abuse Offender Registry office within the department.

573 (4) The department shall:

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

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

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

577 (b) maintain the Child Abuse Offender Notification and Registration website; and

578 (c) ensure that the registration information collected regarding an offender's

579 employment at an educational institution is entered into the appropriate state records or data  
580 system.

581 Section 11. Section **77-43-104** is enacted to read:

582 **77-43-104. Registration of offenders -- Department and agency requirements.**

583 (1) An offender in the custody of the department shall be registered by agents of the

584 department upon:

585 (a) placement on probation;

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

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

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

592 (e) termination of probation or parole.

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

596 (a) commitment to the correctional facility; and

597 (b) release from confinement.

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

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

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

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

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

610 (B) certify annually with the department.

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

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

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

616 (ii) The department shall provide notification under this Subsection (5)(b) if the  
617 offender's change of address is between law enforcement agency jurisdictions, or is within one  
618 jurisdiction.

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

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

626 (a) the continuing registration requirements of this chapter during the period of  
627 registration required in Subsection 77-43-105(3), including:

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

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

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

634 (b) the identification card requirement under Section 53-3-806.5.

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

637 (a) training requirements for agency staff responsible for conducting offender  
638 registration;

639 (b) the method for dissemination of the information; and

640 (c) instructions to the public regarding the use of the information.

641 (8) Any information regarding the identity or location of a victim shall be redacted by  
642 the department from information provided under Subsections 77-43-103(4) and 77-43-105(8).

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

645 Section 12. Section 77-43-105 is enacted to read:

646 77-43-105. Registration of offenders -- Offender responsibilities.

647 (1) An offender convicted by any other jurisdiction is required to register under  
648 Subsection (3) and Subsection 77-43-102(2). The offender shall register with the department  
649 within 10 days of entering the state, regardless of the offender's length of stay.

650 (2) (a) An offender required to register under this chapter who is under supervision by  
651 the department shall register in person with Division of Adult Probation and Parole.

652 (b) An offender required to register under this chapter who is no longer under  
653 supervision by the department shall register in person with the police department or sheriff's  
654 office that has jurisdiction over the area where the offender resides.

655 (3) (a) Except as provided in Subsections (3)(b), (c), and (4), an offender shall, for the  
656 duration of the sentence and for 10 years after termination of sentence or custody of the  
657 division, register every year during the month of the offender's date of birth, during the month  
658 that is the sixth month after the offender's birth month, and also within three business days of  
659 every change of the offender's primary residence, any secondary residences, place of  
660 employment, vehicle information, or educational information required to be submitted under  
661 Subsection (8).

662 (b) Except as provided in Subsections (4) and (5), an offender who is convicted in  
663 another jurisdiction of an offense listed in Subsection 77-43-102(2)(a), a substantially similar  
664 offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

665 (i) register for the time period, and in the frequency, required by the jurisdiction where  
666 the offender was convicted if that jurisdiction's registration period or registration frequency  
667 requirement for the offense that the offender was convicted of is greater than the 10 years from  
668 completion of the sentence registration period that is required under Subsection (2)(a), or is  
669 more frequent than every six months; or

670 (ii) register in accordance with the requirements of Subsection (2)(a), if the  
671 jurisdiction's registration period or frequency requirement for the offense that the offender was  
672 convicted of is less than the registration period required under Subsection (2)(a), or is less  
673 frequent than every six months.

674 (c) (i) An offender convicted as an adult of any first degree felony offense listed in  
675 Subsection 77-43-102(2)(a) shall, for the offender's lifetime, register every year during the  
676 month of the offender's birth, during the month that is the sixth month after the offender's birth

677 month, and also within three business days of every change of the offender's primary residence,  
678 any secondary residences, place of employment, vehicle information, or educational  
679 information required to be submitted under Subsection (6).

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

682 (d) For the purpose of establishing venue for a violation of this Subsection (3), the  
683 violation is considered to be committed:

684 (i) at the most recent registered primary residence of the offender or at the location of  
685 the offender, if the actual location of the offender at the time of the violation is not known; or

686 (ii) at the location of the offender at the time the offender is apprehended.

687 (4) Notwithstanding Subsection (3), an offender who is confined in a secure facility or  
688 in a state mental hospital is not required to register during the period of confinement.

689 (5) In the case of an offender adjudicated in another jurisdiction as a juvenile and  
690 required to register under this chapter, the offender shall register in the time period and in the  
691 frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction  
692 of the offender's adjudication does not publish the offender's information on a public website,  
693 the department shall maintain, but not publish the offender's information on the Child Abuse  
694 Offender Registration website.

695 (6) An offender shall provide the department or the registering entity with the  
696 following information:

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

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

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

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

703 (e) a current photograph of the offender;

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

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

707 (h) telephone numbers and any other designations used by the offender for routing or

708 self-identification in telephonic communications from fixed locations or cellular telephones;

709 (i) Internet identifiers and the addresses the offender uses for routing or

710 self-identification in Internet communications or postings;

711 (j) the name and Internet address of all websites on which the offender is registered

712 using an online identifier, including all online identifiers used to access those websites;

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

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

715 status;

716 (m) all professional licenses that authorize the offender to engage in an occupation or

717 carry out a trade or business, including any identifiers, such as numbers;

718 (n) each educational institution in Utah at which the offender is employed, carries on a

719 vocation, or is a student, and any change of enrollment or employment status of the offender at

720 any educational institution;

721 (o) the name, the telephone number, and the address of any place where the offender is

722 employed or will be employed;

723 (p) the name, the telephone number, and the address of any place where the offender

724 works as a volunteer or will work as a volunteer; and

725 (q) the offender's social security number.

726 (7) Notwithstanding Section [42-1-1](#), an offender:

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

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

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

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

731 Subsection (3)(c).

732 (8) Notwithstanding Subsections (6)(i) and (j) and [77-43-103\(1\)\(c\)](#), an offender is not

733 required to provide the department with:

734 (a) the offender's online identifier and password used exclusively for the offender's

735 employment on equipment provided by an employer and used to access the employer's private

736 network; or

737 (b) online identifiers for the offender's financial accounts, including any bank,

738 retirement, or investment accounts.



739 Section 13. Section 77-43-106 is enacted to read:

740 **77-43-106. Penalties.**

741 (1) An offender who knowingly fails to register under this chapter or provides false or  
742 incomplete information is guilty of a third degree felony and shall be sentenced to serve a term  
743 of incarceration for not less than 90 days and also at least one year of probation.

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

747 (3) The offender shall register for an additional year for every year in which the  
748 offender does not comply with the registration requirements of this chapter.

749 Section 14. Section 77-43-107 is enacted to read:

750 **77-43-107. Classification of information.**

751 Notwithstanding Title 63G, Chapter 2, Government Records Access and Management  
752 Act, information under Subsection 77-43-103(4) that is collected and released under  
753 Subsection 77-43-108(4) is public information, unless otherwise restricted under Subsection  
754 77-43-103(1).

755 Section 15. Section 77-43-108 is enacted to read:

756 **77-43-108. Child Abuse Offender Registry -- Department to maintain.**

757 (1) The department shall maintain a Child Abuse Offender Notification and  
758 Registration website on the Internet, which shall contain a disclaimer informing the public:

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

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

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

765 (2) The Child Abuse Offender Notification and Registration website shall be:

766 (a) indexed by both the surname of the offender and by postal codes; and

767 (b) linked with the Sex and Kidnap Offender Registry as created in Title 77, Chapter

768 41.

769 (3) The department shall construct the Child Abuse Notification and Registration

770 website so that users, before accessing registry information, must indicate that they have read  
771 the disclaimer, understand it, and agree to comply with its terms.

772 (4) Except as provided in Subsection (6), the Child Abuse Offender Notification and  
773 Registration website shall include the following registry information:

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

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

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

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

781 (e) a current photograph of the offender;

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

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

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

787 (i) the crimes listed in Subsection [77-43-102\(2\)](#) that the offender has been convicted of  
788 or for which the offender has been adjudicated delinquent in juvenile court.

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

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

795 Section 16. Section **77-43-109** is enacted to read:

796 **77-43-109. Fees.**

797 (1) Each offender required to register under Section [77-43-105](#) shall, in the month of  
798 the offender's birth:

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

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

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

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

810 (a) data entry;

811 (b) processing registration packets;

812 (c) updating registry information; and

813 (d) ensuring offender compliance with registration requirements under this chapter.