

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

LONG TITLE

General Description:

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

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 Human Services.

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 **62A-1-121**, Utah Code Annotated 1953
- 34 **77-43-101**, Utah Code Annotated 1953
- 35 **77-43-102**, Utah Code Annotated 1953
- 36 **77-43-103**, Utah Code Annotated 1953
- 37 **77-43-104**, Utah Code Annotated 1953
- 38 **77-43-105**, Utah Code Annotated 1953
- 39 **77-43-106**, Utah Code Annotated 1953
- 40 **77-43-107**, Utah Code Annotated 1953
- 41 **77-43-108**, Utah Code Annotated 1953
- 42 **77-43-109**, Utah Code Annotated 1953

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

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

46 **53-3-806.5. Identification card required if offender does not have driver license.**

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

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

54 (2) Failure to maintain a current identification card as required under Subsection (1) on
55 and after April 30, 2007 is a class A misdemeanor for each month of violation of Subsection
56 (1).

57 Section 2. Section **62A-1-121** is enacted to read:

58 **62A-1-121. Child Abuse Offender Registry.**

59 The department shall administer the Child Abuse Offender Registry created in Title 77,
60 Chapter 43, Child Abuse Offender Registry.

61 Section 3. Section **62A-7-104** is amended to read:

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

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

65 (2) The division shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101 (c) provide counseling to youth offenders.

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

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

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

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

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

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

119 (a) has been adjudicated delinquent based on an offense listed in Subsection
120 [77-41-102\(17\)\(a\)](#);

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

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

123 (13) The division shall register with the department any person who:

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

125 [77-43-102\(2\)](#);

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

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

128 Section 4. Section **63G-2-302** is amended to read:

129 **63G-2-302. Private records.**

130 (1) The following records are private:

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

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

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

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

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

139 (A) the commission's summary data report that is required under legislative rule; and

140 (B) any other document that is classified as public under legislative rule; or

141 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
142 unless the record is classified as public under legislative rule;

143 (e) records received by, or generated by or for, the Independent Executive Branch
144 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
145 of Executive Branch Ethics Complaints;

146 (f) records received or generated for a Senate confirmation committee concerning
147 character, professional competence, or physical or mental health of an individual:

148 (i) if, prior to the meeting, the chair of the committee determines release of the records:

149 (A) reasonably could be expected to interfere with the investigation undertaken by the

- 150 committee; or
- 151 (B) would create a danger of depriving a person of a right to a fair proceeding or
- 152 impartial hearing; and
- 153 (ii) after the meeting, if the meeting was closed to the public;
- 154 (g) employment records concerning a current or former employee of, or applicant for
- 155 employment with, a governmental entity that would disclose that individual's home address,
- 156 home telephone number, social security number, insurance coverage, marital status, or payroll
- 157 deductions;
- 158 (h) records or parts of records under Section 63G-2-303 that a current or former
- 159 employee identifies as private according to the requirements of that section;
- 160 (i) that part of a record indicating a person's social security number or federal employer
- 161 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,
- 162 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 163 (j) that part of a voter registration record identifying a voter's:
- 164 (i) driver license or identification card number;
- 165 (ii) Social Security number, or last four digits of the Social Security number;
- 166 (iii) email address; or
- 167 (iv) date of birth;
- 168 (k) a voter registration record that is classified as a private record by the lieutenant
- 169 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
- 170 (l) a record that:
- 171 (i) contains information about an individual;
- 172 (ii) is voluntarily provided by the individual; and
- 173 (iii) goes into an electronic database that:
- 174 (A) is designated by and administered under the authority of the Chief Information
- 175 Officer; and
- 176 (B) acts as a repository of information about the individual that can be electronically
- 177 retrieved and used to facilitate the individual's online interaction with a state agency;
- 178 (m) information provided to the Commissioner of Insurance under:
- 179 (i) Subsection 31A-23a-115(2)(a);
- 180 (ii) Subsection 31A-23a-302(3); or

- 181 (iii) Subsection [31A-26-210\(3\)](#);
- 182 (n) information obtained through a criminal background check under Title 11, Chapter
183 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 184 (o) information provided by an offender that is:
- 185 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
186 Offender Registry or Title 77, Chapter 43, Child Abuse Registry; and
- 187 (ii) not required to be made available to the public under Subsection [77-41-110\(4\)](#) or
188 [77-43-108\(4\)](#);
- 189 (p) a statement and any supporting documentation filed with the attorney general in
190 accordance with Section [34-45-107](#), if the federal law or action supporting the filing involves
191 homeland security;
- 192 (q) electronic toll collection customer account information received or collected under
193 Section [72-6-118](#) and customer information described in Section [17B-2a-815](#) received or
194 collected by a public transit district, including contact and payment information and customer
195 travel data;
- 196 (r) an email address provided by a military or overseas voter under Section
197 [20A-16-501](#);
- 198 (s) a completed military-overseas ballot that is electronically transmitted under Title
199 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- 200 (t) records received by or generated by or for the Political Subdivisions Ethics Review
201 Commission established in Section [11-49-201](#), except for:
- 202 (i) the commission's summary data report that is required in Section [11-49-202](#); and
203 (ii) any other document that is classified as public in accordance with Title 11, Chapter
204 49, Political Subdivisions Ethics Review Commission;
- 205 (u) a record described in Subsection [53A-11a-203\(3\)](#) that verifies that a parent was
206 notified of an incident or threat; and
- 207 (v) a criminal background check or credit history report conducted in accordance with
208 Section [63A-3-201](#).
- 209 (2) The following records are private if properly classified by a governmental entity:
- 210 (a) records concerning a current or former employee of, or applicant for employment
211 with a governmental entity, including performance evaluations and personal status information

212 such as race, religion, or disabilities, but not including records that are public under Subsection
213 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

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

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

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

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

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

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

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

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

230 (g) audio and video recordings created by a body-worn camera, as defined in Section
231 77-7a-103, that record sound or images inside a home or residence except for recordings that:

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

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

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

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

238 or

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

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

243 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
244 doctors, or affiliated entities are not private records or controlled records under Section
245 63G-2-304 when the records are sought:

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

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

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

253 Section 5. Section 76-1-201 is amended to read:

254 **76-1-201. Jurisdiction of offenses.**

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

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

259 (b) the conduct outside the state constitutes an attempt to commit an offense within the
260 state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 (i) any facts claimed; and

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

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

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

302 (b) defendant is a member of the armed forces of another country and that the crime
303 that he is alleged to have committed is one that due to an international agreement, such as a
304 status of forces agreement between his country and the United States, cedes the exercise of

305 jurisdiction over him for that offense to his country;

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

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

312 (7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud
313 Act, involves the use of personal identifying information which is uniquely personal to the
314 consumer or business victim of that identity fraud and which information is considered to be in
315 lawful possession of the consumer or business victim wherever the consumer or business
316 victim currently resides or is found.

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

321 (8) The judge shall determine jurisdiction.

322 Section 6. Section **76-1-202** is amended to read:

323 **76-1-202. Venue of actions.**

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

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

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

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

335 (d) If a cause of death is inflicted in one county and death ensues in another county, the

336 offender may be tried in either county.

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

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

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

344 (i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft
345 passing within this state, the offender may be tried in any county through which such railroad
346 car, vehicle, watercraft, or aircraft has passed.

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

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

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

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

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

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

361 (ii) where the defendant used or attempted to use the personally identifying
362 information;

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

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

366 (i) For the purpose of establishing venue for a violation of Subsection [77-41-105\(3\)](#)

367 concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender
368 registration, the offense is considered to be committed:

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

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

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

374 Section 7. Section **76-3-402** is amended to read:

375 **76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

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

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

385 (a) after the defendant has been successfully discharged from probation;

386 (b) upon motion and notice to the prosecuting attorney;

387 (c) after reasonable effort has been made by the prosecuting attorney to provide notice
388 to any victims;

389 (d) after a hearing if requested by either party under Subsection (2)(c); and

390 (e) if the court finds entering a judgment of conviction for the next lower degree of
391 offense is in the interest of justice.

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

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

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

398 (5) The court may not enter judgment for a conviction for a lower degree of offense if:
399 (a) the reduction is specifically precluded by law; or
400 (b) if any unpaid balance remains on court ordered restitution for the offense for which
401 the reduction is sought.

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

404 (7) (a) A person may not obtain a reduction under this section of a conviction that
405 requires the person to register as a sex offender until the registration requirements under Title
406 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

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

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

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

416 [(8)] (9) As used in this section, "next lower degree of offense" includes an offense
417 regarding which:

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

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

421 Section 8. Section 77-40-105 is amended to read:

422 **77-40-105. Eligibility for expungement of conviction -- Requirements.**

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

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

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

427 (i) a capital felony;

428 (ii) a first degree felony;

- 429 (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);
430 (iv) felony automobile homicide;
431 (v) a felony violation of Subsection 41-6a-501(2); [or]
432 (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or
433 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);
434 (b) a criminal proceeding is pending against the petitioner; or
435 (c) the petitioner intentionally or knowingly provides false or misleading information
436 on the application for a certificate of eligibility.

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

- 440 (a) all fines and interest ordered by the court have been paid in full;
441 (b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board
442 of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and
443 (c) the following time periods have elapsed from the date the petitioner was convicted
444 or released from incarceration, parole, or probation, whichever occurred last, for each
445 conviction the petitioner seeks to expunge:
446 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
447 felony conviction of Subsection 58-37-8(2)(g);
448 (ii) seven years in the case of a felony;
449 (iii) five years in the case of any class A misdemeanor or a felony drug possession
450 offense;
451 (iv) four years in the case of a class B misdemeanor; or
452 (v) three years in the case of any other misdemeanor or infraction.

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

- 456 (a) two or more felony convictions other than for drug possession offenses, each of
457 which is contained in a separate criminal episode;
458 (b) any combination of three or more convictions other than for drug possession
459 offenses that include two class A misdemeanor convictions, each of which is contained in a

460 separate criminal episode;

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

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

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

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

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

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

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

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

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

484 Section 9. Section **77-43-101** is enacted to read:

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

486 **77-43-101. Title.**

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

488 (2) This chapter applies to all child abuse offenders in the custody of the Department of
489 Corrections or on parole or probation on May 9, 2017, or who enter this state on or after May 9,
490 2017.

491 Section 10. Section **77-43-102** is enacted to read:

492 **77-43-102. Definitions.**

493 As used in this chapter:

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

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

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

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

498 (ii) Section [76-5-112.5](#), child endangerment;

499 (iii) Section [76-5-308.5](#), human trafficking of a child; or

500 (iv) attempting, soliciting, or conspiring to commit any felony offense listed in

501 Subsections (2)(a)(i) through (iii);

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

505 (i) a Utah resident; or

506 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of
507 10 or more days, regardless of whether the offender intends to permanently reside in this state;

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

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

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

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

521 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (2)(a)

522 and who has been committed to the division for secure confinement for that offense and
523 remains in the division's custody 30 days before the person's 21st birthday.

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

525 (4) "Department" means the Department of Human Services.

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

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

530 (7) "Indian Country" means:

531 (a) all land within the limits of any Indian reservation under the jurisdiction of the
532 United States government, regardless of the issuance of any patent, and includes rights-of-way
533 running through the reservation;

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

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

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

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

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

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

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

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

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

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

555 (14) "Registration website" means the Child Abuse Offender Notification and
556 Registration website described in Section 77-43-108 and the information on the website.

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

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

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

564 Section 11. Section **77-43-103** is enacted to read:

565 **77-43-103. Department duties.**

566 (1) The department shall:

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

569 (b) make information listed in Subsection 77-43-108(4) available to the public; and

570 (c) share information provided by an offender under this chapter that may not be made
571 available to the public under Subsection 77-43-108(4), but only:

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

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

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

576 (a) the receipt of a report or complaint of an offense listed in Subsection
577 77-43-102(2)(a), within three business days; and

578 (b) the arrest of a person suspected of any of the offenses listed in Subsection
579 77-43-102(2)(a), within five business days.

580 (3) Upon convicting and sentencing a person of any of the offenses listed in Subsection
581 77-43-102(2)(a), the convicting court shall within three business days forward a signed copy of
582 the judgment and sentence to the Child Abuse Offender Registry office within the department.

583 (4) The department shall:

584 (a) provide the following additional information when available:
585 (i) the crimes the offender has been convicted of or adjudicated delinquent for; and
586 (ii) any other relevant identifying information as determined by the department;
587 (b) maintain the Child Abuse Offender Notification and Registration website; and
588 (c) ensure that the registration information collected regarding an offender's
589 employment at an educational institution is entered into the appropriate state records or data
590 system.

591 Section 12. Section **77-43-104** is enacted to read:

592 **77-43-104. Registration of offenders -- Department and agency requirements.**

593 (1) An offender in the custody of the Department of Corrections shall be registered by
594 agents of the Department of Corrections upon:

- 595 (a) placement on probation;
- 596 (b) commitment to a secure correctional facility operated by or under contract to the
597 Department of Corrections;
- 598 (c) release from confinement to parole status, termination or expiration of sentence, or
599 escape;
- 600 (d) entrance to and release from any community-based residential program operated by
601 or under contract to the Department of Corrections; or
- 602 (e) termination of probation or parole.

603 (2) An offender who is not in the custody of the Department of Corrections and who is
604 confined in a correctional facility not operated by or under contract to the department shall be
605 registered with the department by the sheriff of the county in which the offender is confined,
606 upon:

- 607 (a) commitment to the correctional facility; and
- 608 (b) release from confinement.

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

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

613 (5) (a) (i) A municipal or county law enforcement agency shall register an offender
614 who resides within the agency's jurisdiction and is not under the supervision of the Division of

615 Adult Probation and Parole.

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

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

621 (B) certify annually with the department.

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

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

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

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

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

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

637 (a) the continuing registration requirements of this chapter during the period of
638 registration required in Subsection [77-43-105\(3\)](#), including:

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

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

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

645 (b) the identification card requirement under Section [53-3-806.5](#).

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

648 (a) training requirements for agency staff responsible for conducting offender
649 registration;

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

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

652 (8) Any information regarding the identity or location of a victim shall be redacted by
653 the department from information provided under Subsections [77-43-103\(4\)](#) and [77-43-105\(8\)](#).

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

656 Section 13. Section **77-43-105** is enacted to read:

657 **77-43-105. Registration of offenders -- Offender responsibilities.**

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

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

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

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

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

676 (i) register for the time period, and in the frequency, required by the jurisdiction where

677 the offender was convicted if that jurisdiction's registration period or registration frequency
678 requirement for the offense that the offender was convicted of is greater than the 10 years from
679 completion of the sentence registration period that is required under Subsection (2)(a), or is
680 more frequent than every six months; or

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

685 (c) (i) An offender convicted as an adult of any first degree felony offense listed in
686 Subsection 77-43-102(2)(a) shall, for the offender's lifetime, register every year during the
687 month of the offender's birth, during the month that is the sixth month after the offender's birth
688 month, and also within three business days of every change of the offender's primary residence,
689 any secondary residences, place of employment, vehicle information, or educational
690 information required to be submitted under Subsection (6).

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

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

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

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

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

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

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

- 708 (a) all names and aliases by which the offender is or has been known;
- 709 (b) the addresses of the offender's primary and secondary residences;
- 710 (c) a physical description, including the offender's date of birth, height, weight, eye and
- 711 hair color;
- 712 (d) the make, model, color, year, plate number, and vehicle identification number of
- 713 any vehicle or vehicles the offender owns or regularly drives;
- 714 (e) a current photograph of the offender;
- 715 (f) a set of fingerprints, if one has not already been provided;
- 716 (g) a DNA specimen, taken in accordance with Section [53-10-404](#), if one has not
- 717 already been provided;
- 718 (h) telephone numbers and any other designations used by the offender for routing or
- 719 self-identification in telephonic communications from fixed locations or cellular telephones;
- 720 (i) Internet identifiers and the addresses the offender uses for routing or
- 721 self-identification in Internet communications or postings;
- 722 (j) the name and Internet address of all websites on which the offender is registered
- 723 using an online identifier, including all online identifiers used to access those websites;
- 724 (k) a copy of the offender's passport, if a passport has been issued to the offender;
- 725 (l) if the offender is an alien, all documents establishing the offender's immigration
- 726 status;
- 727 (m) all professional licenses that authorize the offender to engage in an occupation or
- 728 carry out a trade or business, including any identifiers, such as numbers;
- 729 (n) each educational institution in Utah at which the offender is employed, carries on a
- 730 vocation, or is a student, and any change of enrollment or employment status of the offender at
- 731 any educational institution;
- 732 (o) the name, the telephone number, and the address of any place where the offender is
- 733 employed or will be employed;
- 734 (p) the name, the telephone number, and the address of any place where the offender
- 735 works as a volunteer or will work as a volunteer; and
- 736 (q) the offender's social security number.
- 737 (7) Notwithstanding Section [42-1-1](#), an offender:
- 738 (a) may not change the offender's name;

739 (i) while under the jurisdiction of the department; and
740 (ii) until the registration requirements of this statute have expired; and
741 (b) may not change the offender's name at any time, if registration is for life under
742 Subsection (3)(c).

743 (8) Notwithstanding Subsections (6)(i) and (j) and 77-43-103(1)(c), an offender is not
744 required to provide the department with:

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

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

750 Section 14. Section **77-43-106** is enacted to read:

751 **77-43-106. Penalties.**

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

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

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

760 Section 15. Section **77-43-107** is enacted to read:

761 **77-43-107. Classification of information.**

762 Notwithstanding Title 63G, Chapter 2, Government Records Access and Management
763 Act, information under Subsection 77-43-103(4) that is collected and released under
764 Subsection 77-43-108(4) is public information, unless otherwise restricted under Subsection
765 77-43-103(1).

766 Section 16. Section **77-43-108** is enacted to read:

767 **77-43-108. Child Abuse Offender Registry -- Department to maintain.**

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

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

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

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

776 (2) The Child Abuse Offender Notification and Registration website shall be indexed
777 by both the surname of the offender and by postal codes.

778 (3) The department shall construct the Child Abuse Notification and Registration
779 website so that users, before accessing registry information, must indicate that they have read
780 the disclaimer, understand it, and agree to comply with its terms.

781 (4) Except as provided in Subsection (5), the Child Abuse Offender Notification and
782 Registration website shall include the following registry information:

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

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

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

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

790 (e) a current photograph of the offender;

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

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

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

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

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

801 information.

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

804 Section 17. Section **77-43-109** is enacted to read:

805 **77-43-109. Fees.**

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

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

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

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

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

819 (a) data entry;

820 (b) processing registration packets;

821 (c) updating registry information; and

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