

BUREAU OF CRIMINAL IDENTIFICATION REPORTING

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill requires reporting of certain information by the courts to the Bureau of Criminal Identification.

Highlighted Provisions:

This bill:

- ▶ requires the clerk of the district court to report information on individuals mentally unfit to purchase firearms to the Bureau of Criminal Identification;
- ▶ requires the Bureau of Criminal Identification to submit information reported by the courts on individuals mentally unfit to purchase firearms to the National Instant Criminal Background Check System;
- ▶ requires the clerk of the district court to report information on individuals subject to a protective order to the Bureau of Criminal Identification; and
- ▶ requires the Bureau of Criminal Identification to submit information reported by the courts on individuals subject to a protective order to the National Crime Information Center.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30 **53-10-102**, as last amended by Laws of Utah 2010, Chapter 276
 31 **53-10-208**, as last amended by Laws of Utah 2009, Chapters 292 and 356
 32 **53-10-208.1**, as last amended by Laws of Utah 2011, Chapter 366
 33 **78B-7-106**, as last amended by Laws of Utah 2018, Chapters 124 and 255

34 ENACTS:

35 **53-10-213**, Utah Code Annotated 1953



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

38 Section 1. Section **53-10-102** is amended to read:

39 **53-10-102. Definitions.**

40 As used in this chapter:

41 (1) "Administration of criminal justice" means performance of any of the following:
 42 detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication,
 43 correctional supervision, or rehabilitation of accused persons or criminal offenders.

44 (2) "Alcoholic beverage" is as defined in Section **32B-1-102**.

45 (3) "Alcoholic product" is as defined in Section **32B-1-102**.

46 (4) "Commission" means the Alcoholic Beverage Control Commission.

47 (5) "Communications services" means the technology of reception, relay, and
 48 transmission of information required by public safety agencies in the performance of their duty.

49 (6) "Conviction record" means criminal history information indicating a record of a
 50 criminal charge which has led to a declaration of guilt of an offense.

51 (7) "Criminal history record information" means information on individuals consisting
 52 of identifiable descriptions and notations of:

53 (a) arrests, detentions, indictments, informations, or other formal criminal charges, and
 54 any disposition arising from any of them; and

55 (b) sentencing, correctional supervision, and release.

56 ~~(8) "Criminalist" means the scientific discipline directed to the recognition,
 57 identification, individualization, and evaluation of physical evidence by application of the~~

58 ~~natural sciences in law-science matters.]~~

59 ~~[(9)]~~ (8) "Criminal justice agency" means courts or a government agency or
60 subdivision of a government agency that administers criminal justice under a statute, executive
61 order, or local ordinance and that allocates greater than 50% of its annual budget to the
62 administration of criminal justice.

63 (9) "Criminalist" means the scientific discipline directed to the recognition,
64 identification, individualization, and evaluation of physical evidence by application of the
65 natural sciences in law-science matters.

66 (10) "Department" means the Department of Public Safety.

67 (11) "Director" means the division director appointed under Section 53-10-103.

68 (12) "Division" means the Criminal Investigations and Technical Services Division
69 created in Section 53-10-103.

70 (13) "Executive order" means an order of the president of the United States or the chief
71 executive of a state that has the force of law and that is published in a manner permitting
72 regular public access to it.

73 (14) "Forensic" means dealing with the application of scientific knowledge relating to
74 criminal evidence.

75 (15) "Mental defective" means an individual who, by a district court, as a result of
76 marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is
77 found:

78 (a) to be a danger to himself or herself or others;

79 (b) to lack the mental capacity to contract or manage the individual's own affairs;

80 (c) to be incompetent by a court in a criminal case; or

81 (d) to be incompetent to stand trial or found not guilty by reason or lack of mental
82 responsibility.

83 ~~[(15)]~~ (16) "Missing child" means any person under the age of 18 years who is missing
84 from the person's home environment or a temporary placement facility for any reason and
85 whose location cannot be determined by the person responsible for the child's care.

86 [~~(16)~~] (17) "Missing person" is as defined in Section 26-2-27.

87 [~~(17)~~] (18) "Pathogens" means disease-causing agents.

88 [~~(18)~~] (19) "Physical evidence" means something submitted to the bureau to determine
89 the truth of a matter using scientific methods of analysis.

90 [~~(19)~~] (20) "Qualifying entity" means a business, organization, or a governmental entity
91 that employs persons or utilizes volunteers who deal with:

- 92 (a) national security interests;
- 93 (b) care, custody, or control of children;
- 94 (c) fiduciary trust over money;
- 95 (d) health care to children or vulnerable adults; or
- 96 (e) the provision of any of the following to a vulnerable adult:
 - 97 (i) care;
 - 98 (ii) protection;
 - 99 (iii) food, shelter, or clothing;
 - 100 (iv) assistance with the activities of daily living; or
 - 101 (v) assistance with financial resource management.

102 Section 2. Section 53-10-208 is amended to read:

103 **53-10-208. Definition -- Offenses included on statewide warrant system --**
 104 **Transportation fee to be included -- Statewide warrant system responsibility -- Quality**
 105 **control -- Training -- Technical support -- Transaction costs.**

106 (1) "Statewide warrant system" means the portion of the state court computer system
107 that is accessible by modem from the state mainframe computer and contains:

- 108 (a) records of criminal warrant information; and
- 109 (b) after notice and hearing, records of protective orders issued pursuant to:
 - 110 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
 - 111 (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

112 (2) (a) The division shall include on the statewide warrant system all warrants issued
113 for felony offenses and class A, B, and C misdemeanor offenses in the state.

114 (b) The division shall include on the statewide warrant system all warrants issued for
115 failure to appear on a traffic citation as ordered by a magistrate under Subsection 77-7-19(3).

116 (c) For each warrant, the division shall indicate whether the magistrate ordered under
117 Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

118 (3) The division is the agency responsible for the statewide warrant system and shall:

119 (a) ensure quality control of all warrants of arrest or commitment and protective orders
120 contained in the statewide warrant system by conducting regular validation checks with every
121 clerk of a court responsible for entering the information on the system;

122 (b) upon the expiration of the protective orders and in the manner prescribed by the
123 division, purge information regarding protective orders described in [Subsection

124 ~~53-10-208.1(4)~~] Subsection 53-10-208.1(1)(d) within 30 days of the time after expiration;

125 (c) establish system procedures and provide training to all criminal justice agencies
126 having access to information contained on the state warrant system;

127 (d) provide technical support, program development, and systems maintenance for the
128 operation of the system; and

129 (e) pay data processing and transaction costs for state, county, and city law
130 enforcement agencies and criminal justice agencies having access to information contained on
131 the state warrant system.

132 (4) (a) Any data processing or transaction costs not funded by legislative appropriation
133 shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

134 (b) This Subsection (4) supersedes any conflicting provision in Subsection (3)(e).

135 Section 3. Section 53-10-208.1 is amended to read:

136 **53-10-208.1. Magistrates and court clerks to supply information.**

137 (1) Every magistrate or clerk of a court responsible for court records in this state shall,
138 within 30 days of the disposition and on forms and in the manner provided by the division,
139 furnish the division with information pertaining to:

140 [(+) (a) all dispositions of criminal matters, including:

141 [(a) (i) guilty pleas;

142 ~~[(b)]~~ (ii) convictions;
 143 ~~[(c)]~~ (iii) dismissals;
 144 ~~[(d)]~~ (iv) acquittals;
 145 ~~[(e)]~~ (v) pleas held in abeyance;
 146 ~~[(f)]~~ (vi) judgments of not guilty by reason of insanity ~~[for a violation of:];~~
 147 ~~[(i) a felony offense;]~~
 148 ~~[(ii) Title 76, Chapter 5, Offenses Against the Person; or]~~
 149 ~~[(iii) Title 76, Chapter 10, Part 5, Weapons;]~~
 150 ~~[(g)]~~ (vii) judgments of guilty with a mental illness;
 151 ~~[(h)]~~ (viii) finding of mental incompetence to stand trial ~~[for a violation of:]; and~~
 152 ~~[(i) a felony offense;]~~
 153 ~~[(ii) Title 76, Chapter 5, Offenses Against the Person; or]~~
 154 ~~[(iii) Title 76, Chapter 10, Part 5, Weapons; or]~~
 155 ~~[(i)]~~ (ix) probations granted; ~~[and]~~
 156 ~~[(2)]~~ (b) orders of civil commitment under the terms of Section 62A-15-631;
 157 ~~[(3)]~~ (c) the issuance, recall, cancellation, or modification of all warrants of arrest or
 158 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303,
 159 within one day of the action and in a manner provided by the division; and
 160 ~~[(4)]~~ (d) protective orders issued after notice and hearing, pursuant to:
 161 ~~[(a)]~~ (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
 162 ~~[(b)]~~ (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.
 163 (2) The court in the county where a determination or finding was made shall transmit a
 164 record of the determination or finding to the bureau no later than 48 hours after the
 165 determination is made, excluding Saturdays, Sundays, and legal holidays, if an individual is:
 166 (a) adjudicated as a mental defective; or
 167 (b) involuntarily committed to a mental institution in accordance with Subsection
 168 62A-15-631(16).
 169 (3) The record described in Subsection (2) shall include:

- 170 (a) an agency record identifier;
- 171 (b) the individual's name, sex, race, and date of birth; and
- 172 (c) the individual's social security number, government issued driver license or
- 173 identification number, alien registration number, government passport number, state
- 174 identification number, or FBI number.

175 Section 4. Section **53-10-213** is enacted to read:

176 **53-10-213. Reporting Requirements.**

177 (1) The bureau shall submit the record received from the court in accordance with

178 Subsection [78B-7-106\(5\)\(e\)](#) to the National Crime Information Center within 48 hours of

179 receipt, excluding Saturdays, Sundays, and legal holidays.

180 (2) The bureau shall submit the record received from the court in accordance with

181 Subsection [53-10-208.1\(2\)](#) to the National Instant Criminal Background Check System within

182 48 hours of receipt, excluding Saturdays, Sundays, and legal holidays.

183 Section 5. Section **78B-7-106** is amended to read:

184 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**

185 **orders -- Service of process -- Duties of the court.**

186 (1) If it appears from a petition for an order for protection or a petition to modify an

187 order for protection that domestic violence or abuse has occurred, that there is a substantial

188 likelihood domestic violence or abuse will occur, or that a modification of an order for

189 protection is required, a court may:

190 (a) without notice, immediately issue an order for protection ex parte or modify an

191 order for protection ex parte as it considers necessary to protect the petitioner and all parties

192 named to be protected in the petition; or

193 (b) upon notice, issue an order for protection or modify an order after a hearing,

194 regardless of whether the respondent appears.

195 (2) A court may grant the following relief without notice in an order for protection or a

196 modification issued ex parte:

197 (a) enjoin the respondent from threatening to commit domestic violence or abuse,

198 committing domestic violence or abuse, or harassing the petitioner or any designated family or
199 household member;

200 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
201 with the petitioner or any designated family or household member, directly or indirectly, with
202 the exception of any parent-time provisions in the ex parte order;

203 (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified
204 distance of the petitioner;

205 (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to
206 stay away from the following places and their premises:

207 (i) the petitioner's residence or any designated family or household member's residence;

208 (ii) the petitioner's school or any designated family or household member's school;

209 (iii) the petitioner's or any designated family or household member's place of
210 employment;

211 (iv) the petitioner's place of worship or any designated family or household member's
212 place of worship; or

213 (v) any specified place frequented by the petitioner or any designated family or
214 household member;

215 (e) if the petitioner or designated family or household member attends the same school
216 as the respondent, is employed at the same place of employment as the respondent, or attends
217 the same place of worship, the court:

218 (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent
219 from the respondent's school, place of employment, or place of worship; and

220 (ii) may enter an order governing the respondent's conduct at the respondent's school,
221 place of employment, or place of worship;

222 (f) upon finding that the respondent's use or possession of a weapon may pose a serious
223 threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a
224 firearm or other weapon specified by the court;

225 (g) order possession and use of an automobile and other essential personal effects, and

226 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
227 the parties to ensure that the petitioner is safely restored to possession of the residence,
228 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
229 removal of personal belongings;

230 (h) order the respondent to maintain an existing wireless telephone contract or account;

231 (i) grant to the petitioner or someone other than the respondent temporary custody of a
232 minor child of the parties;

233 (j) order the appointment of an attorney guardian ad litem under Sections [78A-2-703](#)
234 and [78A-6-902](#);

235 (k) order any further relief that the court considers necessary to provide for the safety
236 and welfare of the petitioner and any designated family or household member; and

237 (l) if the petition requests child support or spousal support, at the hearing on the
238 petition order both parties to provide verification of current income, including year-to-date pay
239 stubs or employer statements of year-to-date or other period of earnings, as specified by the
240 court, and complete copies of tax returns from at least the most recent year.

241 (3) A court may grant the following relief in an order for protection or a modification
242 of an order after notice and hearing, regardless of whether the respondent appears:

243 (a) grant the relief described in Subsection (2); and

244 (b) specify arrangements for parent-time of any minor child by the respondent and
245 require supervision of that parent-time by a third party or deny parent-time if necessary to
246 protect the safety of the petitioner or child.

247 (4) In addition to the relief granted under Subsection (3), the court may order the
248 transfer of a wireless telephone number in accordance with Section [77-36-5.3](#).

249 (5) Following the protective order hearing, the court shall:

250 (a) as soon as possible, deliver the order to the county sheriff for service of process;

251 (b) make reasonable efforts to ensure that the order for protection is understood by the
252 petitioner, and the respondent, if present;

253 (c) transmit electronically, by the end of the next business day after the order is issued,

254 a copy of the order for protection to the local law enforcement agency or agencies designated
255 by the petitioner; ~~and~~

256 (d) transmit a copy of the order to the statewide domestic violence network described
257 in Section [78B-7-113](#)~~[-]~~; and

258 (e) if the individual is a respondent or defendant subject to a court order that meets the
259 qualifications outlined in 18 U.S.C. Sec. 922(g)(8), transmit within 48 hours, excluding
260 Saturdays, Sundays, and legal holidays, a record of the order to the Bureau of Criminal
261 Identification that includes:

262 (i) an agency record identifier;

263 (ii) the individual's name, sex, race, and date of birth;

264 (iii) the issue date, conditions, and expiration date for the protective order; and

265 (iv) if available, the individual's social security number, government issued driver
266 license or identification number, alien registration number, government passport number, state
267 identification number, or FBI number.

268 (6) (a) Each protective order shall include two separate portions, one for provisions, the
269 violation of which are criminal offenses, and one for provisions, the violation of which are civil
270 violations, as follows:

271 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
272 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

273 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
274 as it refers to Subsections (2)(f), (h), and (i).

275 (b) The criminal provision portion shall include a statement that violation of any
276 criminal provision is a class A misdemeanor.

277 (c) The civil provision portion shall include a notice that violation of or failure to
278 comply with a civil provision is subject to contempt proceedings.

279 (7) The protective order shall include:

280 (a) a designation of a specific date, determined by the court, when the civil portion of
281 the protective order either expires or is scheduled for review by the court, which date may not

282 exceed 150 days after the date the order is issued, unless the court indicates on the record the
283 reason for setting a date beyond 150 days;

284 (b) information the petitioner is able to provide to facilitate identification of the
285 respondent, such as social security number, driver license number, date of birth, address,
286 telephone number, and physical description; and

287 (c) a statement advising the petitioner that:

288 (i) after two years from the date of issuance of the protective order, a hearing may be
289 held to dismiss the criminal portion of the protective order;

290 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
291 advise the court of the petitioner's current address for notice of any hearing; and

292 (iii) the address provided by the petitioner will not be made available to the respondent.

293 (8) Child support and spouse support orders issued as part of a protective order are
294 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
295 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
296 IV-D Cases, except when the protective order is issued ex parte.

297 (9) (a) The county sheriff that receives the order from the court, pursuant to Subsection
298 (6)(a), shall provide expedited service for orders for protection issued in accordance with this
299 chapter, and shall transmit verification of service of process, when the order has been served, to
300 the statewide domestic violence network described in Section [78B-7-113](#).

301 (b) This section does not prohibit any law enforcement agency from providing service
302 of process if that law enforcement agency:

303 (i) has contact with the respondent and service by that law enforcement agency is
304 possible; or

305 (ii) determines that under the circumstances, providing service of process on the
306 respondent is in the best interests of the petitioner.

307 (10) (a) When an order is served on a respondent in a jail or other holding facility, the
308 law enforcement agency managing the facility shall make a reasonable effort to provide notice
309 to the petitioner at the time the respondent is released from incarceration.

310 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
311 provide notification, including mailing a copy of the notification to the last-known address of
312 the victim.

313 (11) A court may modify or vacate an order of protection or any provisions in the order
314 after notice and hearing, except that the criminal provisions of a protective order may not be
315 vacated within two years of issuance unless the petitioner:

316 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
317 Rules of Civil Procedure, and the petitioner personally appears, in person or through court
318 video conferencing, before the court and gives specific consent to the vacation of the criminal
319 provisions of the protective order; or

320 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
321 provisions of the protective order.

322 (12) A protective order may be modified without a showing of substantial and material
323 change in circumstances.

324 (13) Insofar as the provisions of this chapter are more specific than the Utah Rules of
325 Civil Procedure, regarding protective orders, the provisions of this chapter govern.