

SEX OFFENDER REGISTRY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Luz Escamilla

LONG TITLE

General Description:

This bill reduces the offense level for individuals under 21 years old for certain crimes and clarifies when an individual is required to register as a sex offender.

Highlighted Provisions:

This bill:

- ▶ clarifies that an individual convicted of the offense of unlawful sexual activity with a minor is required to register as a sex offender unless the individual was less than four years older than the minor at the time of the offense;
 - ▶ reduces the offense level for an individual who is under 21 years old and who commits the crime of unlawful sexual activity with a minor;
 - ▶ provides that an individual who is under 21 years old and who commits the crime of unlawful sexual activity with a minor does not have to register as a sex offender;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-401, as last amended by Laws of Utah 2017, Chapter 397

29 **77-41-102**, as last amended by Laws of Utah 2017, Chapter 434



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

32 Section 1. Section **76-5-401** is amended to read:

33 **76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties --**
34 **Evidence of age raised by defendant.**

35 (1) For purposes of this section "minor" is a person who is 14 years of age or older, but
36 younger than 16 years of age, at the time the sexual activity described in this section occurred.

37 (2) A person 18 years [~~of age~~] old or older commits unlawful sexual activity with a
38 minor if, under circumstances not amounting to rape, in violation of Section **76-5-402**, object
39 rape, in violation of Section **76-5-402.2**, forcible sodomy, in violation of Section **76-5-403**, or
40 aggravated sexual assault, in violation of Section **76-5-405**, the actor:

41 (a) has sexual intercourse with the minor;

42 (b) engages in any sexual act with the minor involving the genitals of one person and
43 the mouth or anus of another person, regardless of the sex of either participant; or

44 (c) causes the penetration, however slight, of the genital or anal opening of the minor
45 by any foreign object, substance, instrument, or device, including a part of the human body,
46 with the intent to cause substantial emotional or bodily pain to any person or with the intent to
47 arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

48 (3) (a) Except under Subsection (3)(b) or (c), a violation of Subsection (2) is a third
49 degree felony.

50 (b) If the defendant establishes by a preponderance of the evidence the mitigating
51 factor that the defendant is less than four years older than the minor at the time the sexual
52 activity occurred, the offense is a class B misdemeanor. An offense under this Subsection
53 (3)(b) is not subject to registration under Subsection **77-41-102(17)(a)(iii)**.

54 (c) If the defendant establishes by a preponderance of the evidence the mitigating factor
55 that the defendant was younger than 21 years old at the time the sexual activity occurred, the

56 offense is a class A misdemeanor. An offense under this Subsection (3)(c) is not subject to
57 registration under Subsection [77-41-102\(17\)\(a\)\(iii\)](#).

58 Section 2. Section **77-41-102** is amended to read:

59 **77-41-102. Definitions.**

60 As used in this chapter:

61 (1) "Bureau" means the Bureau of Criminal Identification of the Department of Public
62 Safety established in section [53-10-201](#).

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

64 (3) "Certificate of eligibility" means a document issued by the Bureau of Criminal
65 Identification showing that the offender has met the requirements of Section [77-41-112](#).

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

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

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

71 (7) "Indian Country" means:

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

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

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

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

83 (9) "Kidnap offender" means any [~~person~~] individual other than a natural parent of the
84 victim who:

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

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

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

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

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

90 (v) attempting, soliciting, or conspiring to commit any felony offense listed in

91 Subsections (9)(a)(i) through (iv);

92 (b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to
93 commit a crime in another jurisdiction, including any state, federal, or military court that is
94 substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

95 (i) a Utah resident; or

96 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of
97 10 or more days, regardless of whether or not the offender intends to permanently reside in this
98 state;

99 (c) (i) is required to register as a kidnap offender in any other jurisdiction of original
100 conviction, who is required to register as a kidnap offender by any state, federal, or military
101 court, or who would be required to register as a kidnap offender if residing in the jurisdiction of
102 the conviction regardless of the date of the conviction or any previous registration
103 requirements; and

104 (ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of
105 whether or not the offender intends to permanently reside in this state;

106 (d) is a nonresident regularly employed or working in this state, or who is a student in
107 this state, and was convicted of one or more offenses listed in Subsection (9), or any
108 substantially equivalent offense in another jurisdiction, or as a result of the conviction, is
109 required to register in the [~~person's~~] individual's state of residence;

110 (e) is found not guilty by reason of insanity in this state or in any other jurisdiction of
111 one or more offenses listed in Subsection (9); or

112 (f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a)
113 and who has been committed to the division for secure confinement for that offense and
114 remains in the division's custody 30 days prior to the [person's] individual's 21st birthday.

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

117 (11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender
118 as defined in Subsection (17).

119 (12) "Online identifier" or "Internet identifier":

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

122 (b) does not include date of birth, social security number, PIN number, or Internet
123 passwords.

124 (13) "Primary residence" means the location where the offender regularly resides, even
125 if the offender intends to move to another location or return to another location at any future
126 date.

127 (14) "Register" means to comply with the requirements of this chapter and
128 administrative rules of the department made under this chapter.

129 (15) "Registration website" means the Sex and Kidnap Offender Notification and
130 Registration website described in Section 77-41-110 and the information on the website.

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

134 (17) "Sex offender" means any [person] individual:

135 (a) convicted in this state of:

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

- 137 (ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10,
138 2011;
- 139 (iii) ~~[a felony violation of]~~ Section 76-5-401, unlawful sexual activity with a minor,
140 except as provided in Subsection 76-5-401(3)(b) or (c);
- 141 (iv) Section 76-5-401.1, sexual abuse of a minor, except ~~[under]~~ as provided in
142 Subsection 76-5-401.1(3)(a);
- 143 (v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;
- 144 (vi) Section 76-5-402, rape;
- 145 (vii) Section 76-5-402.1, rape of a child;
- 146 (viii) Section 76-5-402.2, object rape;
- 147 (ix) Section 76-5-402.3, object rape of a child;
- 148 (x) a felony violation of Section 76-5-403, forcible sodomy;
- 149 (xi) Section 76-5-403.1, sodomy on a child;
- 150 (xii) Section 76-5-404, forcible sexual abuse;
- 151 (xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 152 (xiv) Section 76-5-405, aggravated sexual assault;
- 153 (xv) Section 76-5-412, custodial sexual relations, when the ~~[person]~~ individual in
154 custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;
- 155 (xvi) Section 76-5b-201, sexual exploitation of a minor;
- 156 (xvii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;
- 157 (xviii) Section 76-7-102, incest;
- 158 (xix) Section 76-9-702, lewdness, if the ~~[person]~~ individual has been convicted of the
159 offense four or more times;
- 160 (xx) Section 76-9-702.1, sexual battery, if the ~~[person]~~ individual has been convicted
161 of the offense four or more times;
- 162 (xxi) any combination of convictions of Section 76-9-702, lewdness, and of Section
163 76-9-702.1, sexual battery, that total four or more convictions;

- 164 (xxii) Section 76-9-702.5, lewdness involving a child;
- 165 (xxiii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;
- 166 (xxiv) Section 76-10-1306, aggravated exploitation of prostitution; or
- 167 (xxv) attempting, soliciting, or conspiring to commit any felony offense listed in this
- 168 Subsection (17)(a);
- 169 (b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 170 commit a crime in another jurisdiction, including any state, federal, or military court that is
- 171 substantially equivalent to the offenses listed in Subsection (17)(a) and who is:
- 172 (i) a Utah resident; or
- 173 (ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of
- 174 10 or more days, regardless of whether the offender intends to permanently reside in this state;
- 175 (c) (i) who is required to register as a sex offender in any other jurisdiction of original
- 176 conviction, who is required to register as a sex offender by any state, federal, or military court,
- 177 or who would be required to register as a sex offender if residing in the jurisdiction of the
- 178 original conviction regardless of the date of the conviction or any previous registration
- 179 requirements; and
- 180 (ii) who, in any 12-month period, is in the state for a total of 10 or more days,
- 181 regardless of whether or not the offender intends to permanently reside in this state;
- 182 (d) who is a nonresident regularly employed or working in this state or who is a student
- 183 in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any
- 184 substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required
- 185 to register in the [person's] individual's jurisdiction of residence;
- 186 (e) who is found not guilty by reason of insanity in this state, or in any other
- 187 jurisdiction of one or more offenses listed in Subsection (17)(a); or
- 188 (f) who is adjudicated delinquent based on one or more offenses listed in Subsection
- 189 (17)(a) and who has been committed to the division for secure confinement for that offense and
- 190 remains in the division's custody 30 days prior to the [person's] individual's 21st birthday.

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

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