

1                                   **SEX OFFENDER REGISTRY AMENDMENTS**

2                                                           2021 GENERAL SESSION

3                                                           STATE OF UTAH

4                                   **Chief Sponsor: Jacob L. Anderegg**

5                                   House Sponsor: Craig Hall

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7 **LONG TITLE**

8 **General Description:**

9           This bill concerns the Sex and Kidnap Offender Registry.

10 **Highlighted Provisions:**

11           This bill:

12           ▶ requires the Board of Pardons and Parole, after granting a pardon for a conviction  
13 that requires an individual to be registered on the Sex and Kidnap Offender  
14 Registry, to send an order directing the Department of Corrections to remove the  
15 individual from the registry;

16           ▶ allows certain offenders on the Sex and Kidnap Offender Registry to petition the  
17 court for removal from the registry under specified conditions;

18           ▶ establishes the burden of proof and factors that a court may consider in determining  
19 whether to grant certain petitions for removal from the Sex and Kidnap Offender  
20 Registry;

21           ▶ requires the Department of Corrections to remove an individual from the Sex and  
22 Kidnap Offender Registry when the individual's conviction that requires registration  
23 has been pardoned;

24           ▶ requires the Department of Corrections to automatically remove qualifying  
25 individuals from the Sex and Kidnap Offender Registry;

26           ▶ allows for an individual who has not been automatically removed from the registry  
27 by the Department of Corrections but believes that the individual's offense is no  
28 longer registrable to request removal; and

29           ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides a coordination clause.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **77-41-112**, as last amended by Laws of Utah 2019, Chapter 382

37 **77-41-113**, as enacted by Laws of Utah 2020, Chapter 237

38 ENACTS:

39 **77-27-5.2**, Utah Code Annotated 1953

40 **Utah Code Sections Affected by Coordination Clause:**

41 **77-41-113**, as enacted by Laws of Utah 2020, Chapter 237



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

44 Section 1. Section **77-27-5.2** is enacted to read:

45 **77-27-5.2. Board authority to order removal from Sex and Kidnap Offender**

46 **Registry.**

47 (1) If the board grants a pardon for a conviction that is the basis for an individual's  
48 registration on the Sex and Kidnap Offender Registry, the board shall issue an order directing  
49 the Department of Corrections to remove the individual's name and personal information  
50 relating to the pardoned conviction from the Sex and Kidnap Offender Registry.

51 (2) An order described in Subsection (1), issued by the board, satisfies the notification  
52 requirement described in Subsection **77-41-113**(1)(b).

53 Section 2. Section **77-41-112** is amended to read:

54 **77-41-112. Removal from registry -- Requirements -- Procedure.**

55 (1) An offender who is required to register with the Sex and Kidnap Offender Registry  
56 may petition the court for an order removing the offender from the Sex and Kidnap Offender  
57 Registry if:

- 58 (a) (i) the offender is convicted of an offense described in Subsection (2);
- 59 (ii) at least five years have passed after the day on which the offender's sentence for the
- 60 offense terminates;
- 61 (iii) the offense is the only offense for which the offender is required to register;
- 62 (iv) the offender is not convicted of another offense, excluding a traffic offense, after
- 63 the day on which the offender is convicted of the offense for which the offender is required to
- 64 register, as evidenced by a certificate of eligibility issued by the bureau;
- 65 (v) the offender successfully completes all treatment ordered by the court or the Board
- 66 of Pardons and Parole relating to the offense;
- 67 (vi) the offender pays all restitution ordered by the court or the Board of Pardons and
- 68 Parole relating to the offense; and
- 69 (vii) the offender complies with all registration requirements required under this
- 70 chapter at all times; [~~or~~]
- 71 (b) (i) if the offender is required to register in accordance with Subsection
- 72 77-41-105(3)(a);
- 73 (ii) at least 10 years have passed after the later of:
- 74 (A) the day on which the offender is placed on probation;
- 75 (B) the day on which the offender is released from incarceration to parole;
- 76 (C) the day on which the offender's sentence is terminated without parole;
- 77 (D) the day on which the offender enters a community-based residential program; or
- 78 (E) for a minor, as defined in Section 78A-6-105, the day on which the division's
- 79 custody of the offender is terminated;
- 80 (iii) the offender is not convicted of another offense that is a class A misdemeanor,
- 81 felony, or capital felony within the most recent 10-year period after the date described in
- 82 Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the bureau;
- 83 (iv) the offender successfully completes all treatment ordered by the court or the Board
- 84 of Pardons and Parole relating to the offense;
- 85 (v) the offender pays all restitution ordered by the court or the Board of Pardons and

86 Parole relating to the offense; and

87 (vi) the offender complies with all registration requirements required under this chapter  
88 at all times[-]; or

89 (c) (i) the offender is required to register in accordance with Subsection  
90 77-41-105(3)(c);

91 (ii) at least 20 years have passed after the later of:

92 (A) the day on which the offender was placed on probation;

93 (B) the day on which the offender was released from incarceration to parole;

94 (C) the day on which the offender's sentence was terminated without parole;

95 (D) the day on which the offender entered a community-based residential program; or

96 (E) for a minor, as defined in Section 78A-6-105, the day on which the division's  
97 custody of the offender was terminated;

98 (iii) the offender has not been convicted of another offense that is a class A  
99 misdemeanor, felony, or capital felony within the most recent 20-year period after the date  
100 described in Subsection (1)(c)(ii), as evidenced by a certificate of eligibility issued by the  
101 bureau;

102 (iv) the offender completed all treatment ordered by the court or the Board of Pardons  
103 and Parole relating to the offense;

104 (v) the offender has paid all restitution ordered by the court or the Board of Pardons  
105 and Parole relating to the offense; and

106 (vi) the offender submits to an evidence-based risk assessment to the court, with the  
107 offender's petition, that:

108 (A) meets the standards for the current risk assessment, score, and risk level required  
109 by the Board of Pardons and Parole for parole termination requests;

110 (B) is completed within the six months before the date on which the petition is filed;  
111 and

112 (C) describes the evidence-based risk assessment of the current level of risk to the  
113 safety of the public posed by the offender.

- 114 (2) The offenses referred to in Subsection (1)(a)(i) are:
- 115 (a) Section 76-4-401, enticing a minor, if the offense is a class A misdemeanor;
- 116 (b) Section 76-5-301, kidnapping;
- 117 (c) Section 76-5-304, unlawful detention, if the conviction of violating Section
- 118 76-5-304 is the only conviction for which the offender is required to register;
- 119 (d) Section 76-5-401, unlawful sexual activity with a minor if, at the time of the
- 120 offense, the offender is not more than 10 years older than the victim;
- 121 (e) Section 76-5-401.1, sexual abuse of a minor, if, at the time of the offense, the
- 122 offender is not more than 10 years older than the victim;
- 123 (f) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old, and at the
- 124 time of the offense, the offender is not more than 15 years older than the victim; or
- 125 (g) Section 76-9-702.7, voyeurism, if the offense is a class A misdemeanor.
- 126 (3) (a) (i) An offender seeking removal from the Sex and Kidnap Offender Registry
- 127 under this section shall apply for a certificate of eligibility from the bureau.
- 128 (ii) An offender who intentionally or knowingly provides false or misleading
- 129 information to the bureau when applying for a certificate of eligibility is guilty of a class B
- 130 misdemeanor and subject to prosecution under Section 76-8-504.6.
- 131 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate
- 132 of eligibility to an offender who provides false information on an application.
- 133 (b) (i) The bureau shall perform a check of records of governmental agencies,
- 134 including national criminal databases, to determine whether an offender is eligible to receive a
- 135 certificate of eligibility.
- 136 (ii) If the offender meets the requirements described in Subsection (1)(a) [~~or~~], (b), or
- 137 (c), the bureau shall issue a certificate of eligibility to the offender, which is valid for a period
- 138 of 90 days after the day on which the bureau issues the certificate.
- 139 (iii) The bureau shall request information from the department regarding whether the
- 140 offender meets the requirements.
- 141 (iv) Upon request from the bureau under Subsection (3)(b)(iii), the department shall

142 issue a document that states whether the offender meets the requirements described in  
143 Subsection (1)(a) [~~or~~], (b), or (c), which may be used by the bureau to determine if a certificate  
144 of eligibility is appropriate.

145 (v) The bureau shall provide a copy of the document provided to the bureau under  
146 Subsection (3)(b)(iv) to the offender upon issuance of a certificate of eligibility.

147 (4) (a) (i) The bureau shall charge application and issuance fees for a certificate of  
148 eligibility in accordance with the process in Section [63J-1-504](#).

149 (ii) The application fee shall be paid at the time the offender submits an application for  
150 a certificate of eligibility to the bureau.

151 (iii) If the bureau determines that the issuance of a certificate of eligibility is  
152 appropriate, the offender will be charged an additional fee for the issuance of a certificate of  
153 eligibility.

154 (b) Funds generated under this Subsection (4) shall be deposited into the General Fund  
155 as a dedicated credit by the department to cover the costs incurred in determining eligibility.

156 (5) (a) The offender shall file the petition, including original information, the court  
157 docket, the certificate of eligibility from the bureau, and the document from the department  
158 described in Subsection (3)(b)(iv) with the court, and deliver a copy of the petition to the office  
159 of the prosecutor.

160 (b) Upon receipt of a petition for removal from the Sex and Kidnap Offender Registry,  
161 the office of the prosecutor shall provide notice of the petition by first-class mail to the victim  
162 at the most recent address of record on file or, if the victim is still a minor under 18 years of  
163 age, to the parent or guardian of the victim.

164 (c) The notice described in Subsection (5)(b) shall include a copy of the petition, state  
165 that the victim has a right to object to the removal of the offender from the registry, and  
166 provide instructions for registering an objection with the court.

167 (d) The office of the prosecutor shall provide the following, if available, to the court  
168 within 30 days after the day on which the office receives the petition:

169 (i) presentencing report;

170 (ii) an evaluation done as part of sentencing; and  
171 (iii) any other information the office of the prosecutor feels the court should consider.  
172 (e) The victim, or the victim's parent or guardian if the victim is a minor under 18 years  
173 ~~[of age]~~ old, may respond to the petition by filing a recommendation or objection with the court  
174 within 45 days after the day on which the petition is mailed to the victim.  
175 (6) (a) The court shall:  
176 (i) review the petition and all documents submitted with the petition; and  
177 (ii) hold a hearing if requested by the prosecutor or the victim.  
178 (b) ~~[The]~~ (i) Except as provided in Subsections (6)(b)(ii) and (iii), the court may grant  
179 the petition and order removal of the offender from the registry if the court determines that the  
180 offender has met the requirements described in Subsection (1)(a) or (b) and removal is not  
181 contrary to the interests of the public.  
182 (ii) When considering a petition filed under Subsection (1)(c), the court shall determine  
183 whether the offender has demonstrated, by clear and convincing evidence, that the offender is  
184 rehabilitated and does not pose a threat to the safety of the public.  
185 (iii) In making the determination described in Subsection (6)(b)(ii), the court may  
186 consider:  
187 (A) the nature and degree of violence involved in the offense that requires registration;  
188 (B) the age and number of victims of the offense that requires registration;  
189 (C) the age of the offender at the time of the offense that requires registration;  
190 (D) the offender's performance while on supervision for the offense that requires  
191 registration;  
192 (E) the offender's stability in employment and housing;  
193 (F) the offender's community and personal support system;  
194 (G) other criminal and relevant noncriminal behavior of the offender both before and  
195 after the offense that requires registration;  
196 (H) the level of risk posed by the offender as evidenced by the evidence-based risk  
197 assessment described in Subsection (1)(c)(vi); and

198 (1) any other relevant factors.

199 (c) If the court grants the petition, the court shall forward a copy of the order directing  
200 removal of the offender from the registry to the department and the office of the prosecutor.

201 (d) ~~[H]~~ (i) Except as provided in Subsection (6)(d)(ii), if the court denies the petition,  
202 the offender may not submit another petition for three years.

203 (ii) If the offender files a petition under Subsection (1)(c) and the court denies the  
204 petition, the offender may not submit another petition for eight years.

205 (7) The court shall notify the victim and the Sex and Kidnap Offender Registry office  
206 in the department of the court's decision within three days after the day on which the court  
207 issues the court's decision in the same manner described in Subsection (5).

208 Section 3. Section **77-41-113** is amended to read:

209 **77-41-113. Removal for offenses or convictions for which registration is no longer**  
210 **required.**

211 ~~[(1) An individual who is currently on the Sex and Kidnap Offender Registry because~~  
212 ~~of a conviction for any of the following offenses may contact the department and request~~  
213 ~~removal from the registry if]~~

214 (1) The department shall automatically remove an individual who is currently on the  
215 Sex and Kidnap Offender Registry because of a conviction if:

216 (a) the only offense or offenses for which the individual is on the registry ~~[is]~~ are listed  
217 in Subsection (2)~~[-];~~ or

218 (b) the department receives a formal notification or order from the court or the Board  
219 of Pardons and Parole that the conviction for the offense or offenses for which the individual is  
220 on the registry has been reversed, vacated, or pardoned.

221 ~~[(2) This section applies to a conviction for the following offenses:]~~

222 (2) The offenses described in Subsection (1)(a) are:

223 (a) a class B or class C misdemeanor for enticing a minor, Section 76-4-401;

224 (b) kidnapping, based upon Subsection 76-5-301(1)(a) or (b);

225 (c) child kidnapping, Section 76-5-301.1, if the offender was the natural parent of the



226 child victim;

227 (d) unlawful detention, Section 76-5-304;

228 (e) a third degree felony for unlawful sexual intercourse before 1986, or a class B  
229 misdemeanor for unlawful sexual intercourse, Section 76-5-401; or

230 (f) sodomy, but not forcible sodomy, Section 76-5-403.

231 (3) (a) The department shall notify an individual who has been removed from the  
232 registry in accordance with Subsection (1).

233 (b) The notice described in Subsection (3)(a) shall include a statement that the  
234 individual is no longer required to register as a sex offender.

235 (4) An individual who is currently on the Sex and Kidnap Offender Registry may  
236 submit a request to the department to be removed from the registry if the individual believes  
237 that the individual qualifies for removal under this section.

238 [~~3~~] (5) The department, upon receipt of a request for removal from the registry shall:

239 (a) check the registry for the individual's current status;

240 (b) determine whether the individual qualifies for removal based upon this section; and

241 (c) notify the individual in writing of the department's determination and whether the  
242 individual:

243 (i) qualifies for removal from the registry; or

244 (ii) does not qualify for removal.

245 [~~4~~] (6) If the department determines that the individual qualifies for removal from the  
246 registry, the department shall remove the offender from the registry.

247 [~~5~~] (7) If the department determines that the individual does not qualify for removal  
248 from the registry, the department shall provide an explanation in writing for the department's  
249 determination. The department's determination is final and not subject to administrative review.

250 [~~6~~] (8) Neither the department nor any employee may be civilly liable for a  
251 determination made in good faith in accordance with this section.

252 [~~7~~] (9) The department shall provide a response to a request for removal within 30  
253 days of receipt of the request and payment of the fee. If the response cannot be provided within

254 30 days, the department shall notify the individual that the response may be delayed up to 30  
255 additional days.

256 ~~[(8)]~~ (10) The department may charge a fee, not to exceed \$25, for a request for  
257 removal.

258 Section 4. **Coordinating S.B. 215 with S.B. 165 -- Substantive amendments.**

259 If this S.B. 215 and S.B. 165, Sex Offender Registry Revisions, both pass and become  
260 law, the Legislature intends that the Office of Legislative Research and General Counsel, when  
261 it prepares the Utah Code database for publication, amend Section 77-41-113 to read:

262 "77-41-113. Removal for offenses or convictions for which registration is no  
263 longer required.

264 (1) ~~[An individual who is currently on the Sex and Kidnap Offender Registry because~~  
265 ~~of a conviction for any of the following offenses may contact the department and request~~  
266 ~~removal from the registry if]~~ The department shall automatically remove an individual who is  
267 currently on the Sex and Kidnap Offender Registry because of a conviction if:

268 (a) the only offense or offenses for which the individual is on the registry [is] are listed  
269 in Subsection (2)[-]; or

270 (b) the department receives a formal notification or order from the court or the Board  
271 of Pardons and Parole that the conviction for the offense or offenses for which the individual is  
272 on the registry have been reversed, vacated, or pardoned.

273 (2) ~~[This section applies to a conviction for the following offenses]~~ The offenses  
274 described in Subsection (1)(a) are:

275 (a) a class B or class C misdemeanor for enticing a minor, Section 76-4-401;

276 (b) kidnapping, based upon Subsection 76-5-301(1)(a) or (b);

277 (c) child kidnapping, Section 76-5-301.1, if the offender was the natural parent of the  
278 child victim;

279 (d) unlawful detention, Section 76-5-304;

280 (e) a third degree felony for unlawful sexual intercourse before 1986, or a class B  
281 misdemeanor for unlawful sexual intercourse, Section 76-5-401; or

282 (f) sodomy, but not forcible sodomy, Section [76-5-403](#).

283 (3) (a) The department shall notify an individual who has been removed from the  
284 registry in accordance with Subsection (1).

285 (b) The notice described in Subsection (3)(a) shall include a statement that the  
286 individual is no longer required to register as a sex offender.

287 (4) An individual who is currently on the Sex and Kidnap Offender Registry may  
288 submit a request to the department to be removed from the registry if the individual believes  
289 that the individual qualifies for removal under this section.

290 [~~3~~] (5) The department, upon receipt of a request for removal from the registry shall:

291 (a) check the registry for the individual's current status;

292 (b) determine whether the individual qualifies for removal based upon this section; and

293 (c) notify the individual in writing of the department's determination and whether the  
294 individual:

295 (i) qualifies for removal from the registry; or

296 (ii) does not qualify for removal.

297 [~~4~~] (6) If the department determines that the individual qualifies for removal from the  
298 registry, the department shall remove the offender from the registry.

299 [~~5~~] (7) If the department determines that the individual does not qualify for removal  
300 from the registry, the department shall provide an explanation in writing for the department's  
301 determination. The department's determination is final and not subject to administrative review.

302 [~~6~~] (8) Neither the department nor any employee may be civilly liable for a  
303 determination made in good faith in accordance with this section.

304 [~~7~~] (9) The department shall provide a response to a request for removal within 30  
305 days of receipt of the request [~~and payment of the fee~~]. If the response cannot be provided  
306 within 30 days, the department shall notify the individual that the response may be delayed up  
307 to 30 additional days.

308 [~~8) The department may charge a fee, not to exceed \$25, for a request for removal.].~~