

SEX OFFENDER REGISTRY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill concerns the Sex and Kidnap Offender Registry.

Highlighted Provisions:

This bill:

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

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

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

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

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

▶ allows for an individual who has not been automatically removed from the registry 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 None

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



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

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

43 **77-27-5.2. Board authority to order removal from Sex and Kidnap Offender**

44 **Registry.**

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

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

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

52 **77-41-112. Removal from registry -- Requirements -- Procedure.**

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

- 56 (a) (i) the offender is convicted of an offense described in Subsection (2);
- 57 (ii) at least five years have passed after the day on which the offender's sentence for the
58 offense terminates;

- 59 (iii) the offense is the only offense for which the offender is required to register;
- 60 (iv) the offender is not convicted of another offense, excluding a traffic offense, after
61 the day on which the offender is convicted of the offense for which the offender is required to
62 register, as evidenced by a certificate of eligibility issued by the bureau;
- 63 (v) the offender successfully completes all treatment ordered by the court or the Board
64 of Pardons and Parole relating to the offense;
- 65 (vi) the offender pays all restitution ordered by the court or the Board of Pardons and
66 Parole relating to the offense; and
- 67 (vii) the offender complies with all registration requirements required under this
68 chapter at all times; ~~or~~
- 69 (b) (i) if the offender is required to register in accordance with Subsection
70 [77-41-105\(3\)\(a\)](#);
- 71 (ii) at least 10 years have passed after the later of:
- 72 (A) the day on which the offender is placed on probation;
- 73 (B) the day on which the offender is released from incarceration to parole;
- 74 (C) the day on which the offender's sentence is terminated without parole;
- 75 (D) the day on which the offender enters a community-based residential program; or
- 76 (E) for a minor, as defined in Section [78A-6-105](#), the day on which the division's
77 custody of the offender is terminated;
- 78 (iii) the offender is not convicted of another offense that is a class A misdemeanor,
79 felony, or capital felony within the most recent 10-year period after the date described in
80 Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the bureau;
- 81 (iv) the offender successfully completes all treatment ordered by the court or the Board
82 of Pardons and Parole relating to the offense;
- 83 (v) the offender pays all restitution ordered by the court or the Board of Pardons and
84 Parole relating to the offense; and
- 85 (vi) the offender complies with all registration requirements required under this chapter
86 at all times~~[-];~~ or
- 87 (c) (i) the offender is required to register in accordance with Subsection
88 [77-41-105\(3\)\(c\)](#);
- 89 (ii) at least 15 years have passed after the later of:

- 90 (A) the day on which the offender was placed on probation;
- 91 (B) the day on which the offender was released from incarceration to parole;
- 92 (C) the day on which the offender's sentence was terminated without parole;
- 93 (D) the day on which the offender entered a community-based residential program; or
- 94 (E) for a minor, as defined in Section 78A-6-105, the day on which the division's
- 95 custody of the offender was terminated;

96 (iii) the offender has not been convicted of another offense that is a class A
97 misdemeanor, felony, or capital felony within the most recent 15-year period after the date
98 described in Subsection (1)(c)(ii), as evidenced by a certificate of eligibility issued by the
99 bureau;

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

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

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

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

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

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

112 (2) The offenses referred to in Subsection (1)(a)(i) are:

113 (a) Section 76-4-401, enticing a minor, if the offense is a class A misdemeanor;

114 (b) Section 76-5-301, kidnapping;

115 (c) Section 76-5-304, unlawful detention, if the conviction of violating Section
116 76-5-304 is the only conviction for which the offender is required to register;

117 (d) Section 76-5-401, unlawful sexual activity with a minor if, at the time of the
118 offense, the offender is not more than 10 years older than the victim;

119 (e) Section 76-5-401.1, sexual abuse of a minor, if, at the time of the offense, the
120 offender is not more than 10 years older than the victim;

121 (f) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old, and at the
122 time of the offense, the offender is not more than 15 years older than the victim; or

123 (g) Section 76-9-702.7, voyeurism, if the offense is a class A misdemeanor.

124 (3) (a) (i) An offender seeking removal from the Sex and Kidnap Offender Registry
125 under this section shall apply for a certificate of eligibility from the bureau.

126 (ii) An offender who intentionally or knowingly provides false or misleading
127 information to the bureau when applying for a certificate of eligibility is guilty of a class B
128 misdemeanor and subject to prosecution under Section 76-8-504.6.

129 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate
130 of eligibility to an offender who provides false information on an application.

131 (b) (i) The bureau shall perform a check of records of governmental agencies,
132 including national criminal databases, to determine whether an offender is eligible to receive a
133 certificate of eligibility.

134 (ii) If the offender meets the requirements described in Subsection (1)(a) ~~(or)~~, (b), or
135 (c), the bureau shall issue a certificate of eligibility to the offender, which is valid for a period
136 of 90 days after the day on which the bureau issues the certificate.

137 (iii) The bureau shall request information from the department regarding whether the
138 offender meets the requirements.

139 (iv) Upon request from the bureau under Subsection (3)(b)(iii), the department shall
140 issue a document that states whether the offender meets the requirements described in
141 Subsection (1)(a) ~~(or)~~, (b), or (c), which may be used by the bureau to determine if a certificate
142 of eligibility is appropriate.

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

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

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

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

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

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

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

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

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

167 (i) presentencing report;

168 (ii) an evaluation done as part of sentencing; and

169 (iii) any other information the office of the prosecutor feels the court should consider.

170 (e) The victim, or the victim's parent or guardian if the victim is a minor under 18 years
171 ~~[of age]~~ old, may respond to the petition by filing a recommendation or objection with the court
172 within 45 days after the day on which the petition is mailed to the victim.

173 (6) (a) The court shall:

174 (i) review the petition and all documents submitted with the petition; and

175 (ii) hold a hearing if requested by the prosecutor or the victim.

176 (b) ~~[The]~~ (i) Except as provided in Subsections (6)(b)(ii) and (iii), the court may grant
177 the petition and order removal of the offender from the registry if the court determines that the
178 offender has met the requirements described in Subsection (1)(a) or (b) and removal is not
179 contrary to the interests of the public.

180 (ii) When considering a petition filed under Subsection (1)(c), the court shall determine
181 whether the offender has demonstrated, by clear and convincing evidence, that the offender is
182 rehabilitated and does not pose a threat to the safety of the public.

183 (iii) In making the determination described in Subsection (6)(b)(ii), the court may
 184 consider:

185 (A) the nature and degree of violence involved in the offense that requires registration;

186 (B) the age and number of victims of the offense that requires registration;

187 (C) the age of the offender at the time of the offense that requires registration;

188 (D) the offender's performance while on supervision for the offense that requires
 189 registration;

190 (E) the offender's stability in employment and housing;

191 (F) the offender's community and personal support system;

192 (G) other criminal and relevant noncriminal behavior of the offender both before and
 193 after the offense that requires registration;

194 (H) the level of risk posed by the offender as evidenced by the evidence-based risk
 195 assessment described in Subsection (1)(c)(vi); and

196 (I) any other relevant factors.

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

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

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

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

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

207 **77-41-113. Removal for offenses or convictions for which registration is no longer**
 208 **required.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

236 [~~(3)~~] (5) The department, upon receipt of a request for removal from the registry shall:

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

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

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

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

242 (ii) does not qualify for removal.

243 [~~(4)~~] (6) If the department determines that the individual qualifies for removal from the
244 registry, the department shall remove the offender from the registry.

245 [~~(5)~~] (7) If the department determines that the individual does not qualify for removal
246 from the registry, the department shall provide an explanation in writing for the department's
247 determination. The department's determination is final and not subject to administrative review.

248 [~~(6)~~] (8) Neither the department nor any employee may be civilly liable for a
249 determination made in good faith in accordance with this section.

250 [~~(7)~~] (9) The department shall provide a response to a request for removal within 30
251 days of receipt of the request and payment of the fee. If the response cannot be provided within
252 30 days, the department shall notify the individual that the response may be delayed up to 30
253 additional days.

254 [~~(8)~~] (10) The department may charge a fee, not to exceed \$25, for a request for
255 removal.