

Senator Jacob L. Anderegg proposes the following substitute bill:

SEX OFFENDER REGISTRY AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

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;



- 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 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 25 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 25-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 has substantially complied with all registration requirements under
105 this chapter at all times.

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

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

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

109 (c) Section 76-5-304, unlawful detention, if the conviction of violating Section
110 76-5-304 is the only conviction for which the offender is required to register;

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

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

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

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

118 (3) (a) (i) An offender seeking removal from the Sex and Kidnap Offender Registry

119 under this section shall apply for a certificate of eligibility from the bureau.

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

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

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

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

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

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

137 (B) The document from the department shall include a statement regarding the
138 offender's compliance with all registration requirements described under this chapter.

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

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

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

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

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

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

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

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

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

- 163 (i) presentencing report;
- 164 (ii) an evaluation done as part of sentencing; and
- 165 (iii) any other information the office of the prosecutor feels the court should consider.

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

169 (6) (a) The court shall:

- 170 (i) review the petition and all documents submitted with the petition; and
- 171 (ii) hold a hearing if requested by the prosecutor or the victim.

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

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

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

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

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

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

184 (D) the offender's performance while on supervision for the offense that requires

185 registration;

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

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

188 (G) other criminal and relevant noncriminal behavior of the offender both before and

189 after the offense that requires registration;

190 (H) the level of risk posed by the offender; and

191 (I) any other relevant factors.

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

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

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

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

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

202 **77-41-113. Removal for offenses or convictions for which registration is no longer**
203 **required.**

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

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

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

211 (b) the department receives a formal notification or order from the court or the Board

212 of Pardons and Parole that the conviction for the offense or offenses for which the individual is
213 on the registry has been reversed, vacated, or pardoned.

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

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

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

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

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

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

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

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

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

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

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

231 [~~(3)~~] (5) The department, upon receipt of a request for removal from the registry shall:

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

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

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

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

237 (ii) does not qualify for removal.

238 [~~(4)~~] (6) If the department determines that the individual qualifies for removal from the
239 registry, the department shall remove the offender from the registry.

240 [~~(5)~~] (7) If the department determines that the individual does not qualify for removal
241 from the registry, the department shall provide an explanation in writing for the department's
242 determination. The department's determination is final and not subject to administrative review.

243 [~~(6)~~] (8) Neither the department nor any employee may be civilly liable for a
244 determination made in good faith in accordance with this section.

245 [~~(7)~~] (9) The department shall provide a response to a request for removal within 30
246 days of receipt of the request and payment of the fee. If the response cannot be provided within
247 30 days, the department shall notify the individual that the response may be delayed up to 30
248 additional days.

249 [~~(8)~~] (10) The department may charge a fee, not to exceed \$25, for a request for
250 removal.