

## SB0215S02 compared with SB0215

~~text~~ shows text that was in SB0215 but was deleted in SB0215S02.

text shows text that was not in SB0215 but was inserted into SB0215S02.

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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: \_\_\_\_\_

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#### 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

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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 longer registrable to request removal; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

77-27-5.2, Utah Code Annotated 1953

### Utah Code Sections Affected by Coordination Clause:

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

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

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

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

**Registry.**

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

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

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

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

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

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

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Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the bureau;

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

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

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

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

(ii) at least ~~15~~20 years have passed after the later of:

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

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

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

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

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

(iii) the offender has not been convicted of another offense that is a class A misdemeanor, felony, or capital felony within the most recent ~~15-year~~20-year period after the date described in Subsection (1)(c)(ii), as evidenced by a certificate of eligibility issued by the bureau;

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

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

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

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

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

(C) describes the evidence-based risk assessment of the current level of risk to the

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safety of the public posed by the offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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of eligibility is appropriate.

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

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

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

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

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

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

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

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

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

(i) presentencing report;

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

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

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

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(6) (a) The court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) any other relevant factors.

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

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

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

(7) The court shall notify the victim and the Sex and Kidnap Offender Registry office

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in the department of the court's decision within three days after the day on which the court issues the court's decision in the same manner described in Subsection (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) An individual who is currently on the Sex and Kidnap Offender Registry may submit a request to the department to be removed from the registry if the individual believes



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that the individual qualifies for removal under this section.

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

- (a) check the registry for the individual's current status;
- (b) determine whether the individual qualifies for removal based upon this section; and
- (c) notify the individual in writing of the department's determination and whether the

individual:

- (i) qualifies for removal from the registry; or
- (ii) does not qualify for removal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) qualifies for removal from the registry; or

(ii) does not qualify for removal.

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

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

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

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

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