

Representative Marsha Judkins proposes the following substitute bill:

SEX AND KIDNAP OFFENDER REGISTRY REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: Stephanie Pitcher

LONG TITLE

General Description:

This bill amends sex and kidnap offender registry requirements.

Highlighted Provisions:

This bill:

- ▶ amends sex and kidnap offender registry requirements for an offender who commits certain offenses in another state; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-41-105, as last amended by Laws of Utah 2020, Chapter 108

77-41-112, as last amended by Laws of Utah 2021, Chapters 262, 334 and 410 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 334

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



26 Section 1. Section 77-41-105 is amended to read:

27 **77-41-105. Registration of offenders -- Offender responsibilities.**

28 (1) (a) An offender who enters this state from another jurisdiction is required to register
29 under Subsection (3) and Subsection 77-41-102(9) or (17).

30 (b) The offender shall register with the department within 10 days after the day on
31 which the offender enters the state, regardless of the offender's length of stay.

32 (2) (a) An offender required to register under Subsection 77-41-102(9) or (17) who is
33 under supervision by the department shall register in person with Division of Adult Probation
34 and Parole.

35 (b) An offender required to register under Subsection 77-41-102(9) or (17) who is no
36 longer under supervision by the department shall register in person with the police department
37 or sheriff's office that has jurisdiction over the area where the offender resides.

38 (3) (a) Except as provided in Subsections (3)(b), ~~(3)(c)(e)~~, and (4), an offender shall,
39 for the duration of the sentence and for 10 years after termination of sentence or custody of the
40 division, register each year during the month of the offender's date of birth, during the month
41 that is the sixth month after the offender's birth month, and within three business days after the
42 day on which there is a change of the offender's primary residence, any secondary residences,
43 place of employment, vehicle information, or educational information required to be submitted
44 under Subsection (7).

45 (b) Except as provided in Subsections (3)(c)(iii), (4), and (5), an offender who is
46 convicted in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or (17)(a), a
47 substantially similar offense, another offense that requires registration in the jurisdiction of
48 conviction, or an offender who is ordered by a court of another jurisdiction to register as an
49 offender shall[+]

50 [(+)] register for the time period~~[-and in the frequency,]~~ required by the jurisdiction
51 where the offender was convicted or ordered to register [if:].

52 [~~(A) that jurisdiction's registration period or registration frequency requirement for the~~
53 ~~offense that the offender was convicted of is greater than the registration period required under~~
54 ~~Subsection (3)(a), or is more frequent than every six months; or]~~

55 [~~(B) that jurisdiction's court order requires registration for greater than the registration~~
56 ~~period required under Subsection (3)(a) or more frequently than every six months; or]~~

57 ~~[(ii) register in accordance with the requirements of Subsection (3)(a), if the~~
58 ~~jurisdiction's registration period or frequency requirement for the offense that the offender was~~
59 ~~convicted of is less than the registration period required under Subsection (3)(a), or is less~~
60 ~~frequent than every six months.]~~

61 (c) (i) An offender convicted as an adult of an offense listed in Section 77-41-106
62 shall, for the offender's lifetime, register each year during the month of the offender's birth,
63 during the month that is the sixth month after the offender's birth month, and also within three
64 business days after the day on which there is a change of the offender's primary residence, any
65 secondary residences, place of employment, vehicle information, or educational information
66 required to be submitted under Subsection (7).

67 (ii) Except as provided in Subsection (3)(c)(iii), the registration requirement described
68 in Subsection (3)(c)(i) is not subject to exemptions and may not be terminated or altered during
69 the offender's lifetime, unless a petition is granted under Section 77-41-112.

70 (iii) (A) If the sentencing court determines that the offense does not involve force or
71 coercion, lifetime registration under Subsection (3)(c)(i) does not apply to an offender who
72 commits the offense when the offender is under 21 years ~~[of age]~~ old.

73 (B) For an offense listed in Section 77-41-106, an offender who commits the offense
74 when the offender is under 21 years ~~[of age]~~ old shall register for the registration period
75 required under Subsection (3)(a), unless a petition is granted under Section 77-41-112.

76 (d) For the purpose of establishing venue for a violation of this Subsection (3), the
77 violation is considered to be committed:

78 (i) at the most recent registered primary residence of the offender or at the location of
79 the offender, if the actual location of the offender at the time of the violation is not known; or

80 (ii) at the location of the offender at the time the offender is apprehended.

81 (4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is
82 confined in a secure facility or in a state mental hospital is not required to register during the
83 period of confinement.

84 (5) (a) Except as provided in Subsection (5)(b), in the case of an offender adjudicated
85 in another jurisdiction as a juvenile and required to register under this chapter, the offender
86 shall register in the time period and in the frequency consistent with the requirements of
87 Subsection (3).

88 (b) If the jurisdiction of the offender's adjudication does not publish the offender's
89 information on a public website, the department shall maintain, but not publish the offender's
90 information on the registration website.

91 (6) A sex offender who violates Section 77-27-21.8 regarding being in the presence of
92 a child while required to register under this chapter shall register for an additional five years
93 subsequent to the registration period otherwise required under this chapter.

94 (7) An offender shall provide the department or the registering entity with the
95 following information:

96 (a) all names and aliases by which the offender is or has been known;

97 (b) the addresses of the offender's primary and secondary residences;

98 (c) a physical description, including the offender's date of birth, height, weight, eye and
99 hair color;

100 (d) the make, model, color, year, plate number, and vehicle identification number of a
101 vehicle or vehicles the offender owns or regularly drives;

102 (e) a current photograph of the offender;

103 (f) a set of fingerprints, if one has not already been provided;

104 (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not
105 already been provided;

106 (h) telephone numbers and any other designations used by the offender for routing or
107 self-identification in telephonic communications from fixed locations or cellular telephones;

108 (i) Internet identifiers and the addresses the offender uses for routing or
109 self-identification in Internet communications or postings;

110 (j) the name and Internet address of all websites on which the offender is registered
111 using an online identifier, including all online identifiers used to access those websites;

112 (k) a copy of the offender's passport, if a passport has been issued to the offender;

113 (l) if the offender is an alien, all documents establishing the offender's immigration
114 status;

115 (m) all professional licenses that authorize the offender to engage in an occupation or
116 carry out a trade or business, including any identifiers, such as numbers;

117 (n) each educational institution in Utah at which the offender is employed, carries on a
118 vocation, or is a student, and a change of enrollment or employment status of the offender at an

119 educational institution;

120 (o) the name, the telephone number, and the address of a place where the offender is
121 employed or will be employed;

122 (p) the name, the telephone number, and the address of a place where the offender
123 works as a volunteer or will work as a volunteer; and

124 (q) the offender's social security number.

125 (8) (a) An offender may change the offender's name in accordance with Title 42,
126 Chapter 1, Change of Name, if the name change is not contrary to the interests of the public.

127 (b) Notwithstanding Section 42-1-2, an offender shall provide notice to the department
128 at least 30 days before the day on which the hearing for the name change is held.

129 (c) The court shall provide a copy of the order granting the offender's name change to
130 the department within 10 days after the day on which the court issues the order.

131 (d) If the court orders an offender's name changed, the department shall publish on the
132 registration website the offender's former name, and the offender's changed name as an alias.

133 (9) Notwithstanding Subsections (7)(i) and (j) and 77-41-103(1)(c), an offender is not
134 required to provide the department with:

135 (a) the offender's online identifier and password used exclusively for the offender's
136 employment on equipment provided by an employer and used to access the employer's private
137 network; or

138 (b) online identifiers for the offender's financial accounts, including a bank, retirement,
139 or investment account.

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

141 **77-41-112. Removal from registry -- Requirements -- Procedure.**

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

145 (a) (i) the offender was convicted of an offense described in Subsection (2);

146 (ii) at least five years have passed after the day on which the offender's sentence for the
147 offense terminated;

148 (iii) the offense is the only offense for which the offender was required to register;

149 (iv) the offender has not been convicted of another offense, excluding a traffic offense,

150 since the day on which the offender was convicted of the offense for which the offender is
151 required to register, as evidenced by a certificate of eligibility issued by the bureau;

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

154 (vi) the offender has paid all restitution ordered by the court or the Board of Pardons
155 and Parole relating to the offense; [or]

156 (b) (i) if the offender is required to register in accordance with Subsection
157 77-41-105(3)(a);

158 (ii) at least 10 years have passed after the later of:

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

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

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

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

163 (E) for a minor, as defined in Section 80-1-102, the day on which the division's custody
164 of the offender was terminated;

165 (iii) the offender has not been convicted of another offense that is a class A
166 misdemeanor, felony, or capital felony within the most recent 10-year period after the date
167 described in Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the
168 bureau;

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

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

173 (c) (i) the offender is required to register in accordance with Subsection
174 77-41-105(3)(c);

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

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

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

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

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

180 (E) for a minor, as defined in Section 80-1-102, the day on which the division's custody

181 of the offender was terminated;

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

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

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

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

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

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

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

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

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

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

201 (c) Section 76-5-304, unlawful detention, if the conviction of violating Section
202 76-5-304 is the only conviction for which the offender is required to register;

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

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

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

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

210 (h) an offense for which an individual is required to register under Subsection
211 77-41-102(9)(c) or 77-41-102(17)(c), if the offense is not substantially equivalent to an offense

212 described in Subsection 77-41-102(9)(a) or 77-41-102(17)(a).

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

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

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

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

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

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

228 (iv) (A) Upon request from the bureau under Subsection (3)(b)(iii), the department
229 shall issue a document on whether the offender meets the requirements described in Subsection
230 (1)(a), (b), or (c), which shall be used by the bureau to determine if a certificate of eligibility is
231 appropriate.

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

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

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

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

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

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

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

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

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

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

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

261 (e) The victim, or the victim's parent or guardian if the victim is a minor under 18 years
262 old, may respond to the petition by filing a recommendation or objection with the court within
263 45 days after the day on which the petition is mailed to the victim.

264 (6) (a) The court shall:

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

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

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

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

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

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

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

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

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

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

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

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

287 (I) any other relevant factors.

288 (c) In determining whether removal is contrary to the interests of the public, the court
289 may not consider removal unless the offender has substantially complied with all registration
290 requirements under this chapter at all times.

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

293 (e) (i) Except as provided in Subsection (6)(e)(ii), if the court denies the petition, the
294 offender may not submit another petition for three years.

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

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

300 (8) Except as provided in Subsection (9), an offender required to register under
301 Subsection 77-41-105(3)(b) may petition for early removal from the registry under Subsection
302 (1)(b) if the offender:

303 (a) meets the requirements of Subsections (1)(b)(ii) through (v);

304 (b) has resided in this state for at least 183 days in a year for two consecutive years;

305 and

306 (c) intends to primarily reside in this state.

307 (9) An offender required to register under Subsection 77-41-105(3)(b) for life may
308 petition for early removal from the registry under Subsection (1)(c) if:

309 (a) the offense requiring the offender to register is substantially equivalent to an
310 offense listed in Section 77-41-106;

311 (b) the offender meets the requirements of Subsections (1)(c)(ii) through (vi);

312 (c) the offender has resided in this state for at least 183 days in a year for two
313 consecutive years; and

314 (d) the offender intends to primarily reside in this state.