

SB0134S01 compared with SB0134

~~{deleted text}~~ shows text that was in SB0134 but was deleted in SB0134S01.

inserted text shows text that was not in SB0134 but was inserted into SB0134S01.

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Senator Todd D. Weiler proposes the following substitute bill:

SEX AND KIDNAP OFFENDER REGISTRY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill address registration on the Sex and Kidnap Offender Registry.

Highlighted Provisions:

This bill:

- ▶ removes a felony conviction for enticing a minor from the list of crimes that require an offender to register on the Sex and Kidnap Offender Registry for the offender's lifetime;~~{~~

~~→ allows an offender convicted of a felony enticing a minor crime to petition to be removed from the Sex and Kidnap Offender Registry five years after the day on which the offender's sentence for that offense is terminated;}~~ and

- ▶ makes technical changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-41-106, as last amended by Laws of Utah 2022, Chapters 185, 430

~~{ **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:

Section 1. Section **77-41-106** is amended to read:

77-41-106. Offenses requiring lifetime registration.

Offenses requiring lifetime registration referred to in Subsection 77-41-105(3)(c)(i) are:

(1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense committed as a juvenile;

(2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:

(a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403.1, sodomy on a child;

(g) Section 76-5-404.3, aggravated sexual abuse of a child; or

(h) Section 76-5-405, aggravated sexual assault;

(3) Section 76-5-308.1, human trafficking for sexual exploitation;

(4) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

(5) Section 76-5-310, aggravated human trafficking for sexual exploitation;

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(6) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;
[~~(7)~~] ~~Section 76-4-401, a felony violation of enticing a minor over the Internet;~~
[~~(8)~~] (7) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;
[~~(9)~~] (8) Section 76-5-403, forcible sodomy;
[~~(10)~~] (9) Section 76-5-404.1, sexual abuse of a child;
[~~(11)~~] (10) Section 76-5b-201, sexual exploitation of a minor;
[~~(12)~~] (11) Section 76-5b-201.1, aggravated sexual exploitation of a minor;
[~~(13)~~] (12) Subsection 76-5b-204(2)(b), aggravated sexual extortion; or
[~~(14)~~] (13) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

~~{ 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 was 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 terminated;~~
- ~~(iii) the offense is the only offense for which the offender was required to register;~~
- ~~(iv) the offender has not been convicted of another offense, excluding a traffic offense, since the day on which the offender was 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 completed all treatment ordered by the court or the Board of Pardons and Parole relating to the offense; and~~
- ~~(vi) the offender has paid all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; 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 was placed on probation;~~

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- ~~—— (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 80-1-102, 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 10-year period after the date described in Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the bureau;~~
- ~~—— (iv) the offender successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the offense; and~~
- ~~—— (v) the offender has paid all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; or~~
- ~~—— (c) (i) the offender is required to register in accordance with Subsection 77-41-105(3)(c);~~
- ~~—— (ii) at least 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 80-1-102, 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 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~~

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~~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 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), (b), or (c), the bureau shall issue a certificate of eligibility to the offender, which is valid for a period of 90~~

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

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

~~—— (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 old, 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:~~

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~~—— (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 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:~~

~~—— (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) (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~~

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~~—— (f) any other relevant factors.~~

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

~~—— (d) 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.~~

~~—— (e) (i) Except as provided in Subsection (6)(e)(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 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).~~

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