

## SB0023S01 compared with SB0023

~~{deleted text}~~ shows text that was in SB0023 but was deleted in SB0023S01.

inserted text shows text that was not in SB0023 but was inserted into SB0023S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Andrew Stoddard proposes the following substitute bill:

### OFFENDER REGISTRY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: {}Keith Grover**

House Sponsor: {}Andrew Stoddard

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#### LONG TITLE

##### ~~{Committee Note:~~

~~—————The Law Enforcement and Criminal Justice Interim Committee recommended this bill.~~

~~—————Legislative Vote: 11 voting for 0 voting against 7 absent~~

##### ~~{General Description:~~

This bill amends provisions relating to the Sex and Kidnap Offender Registry and the Child Abuse Offender Registry.

##### **Highlighted Provisions:**

This bill:

- ▶ merges the Sex and Kidnap Offender Registry and the Child Abuse Offender Registry into a single registry called the "Sex, Kidnap, and Child Abuse Offender Registry";
- ▶ changes the length of time an offender must register on the Sex, Kidnap, and Child

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Abuse Offender Registry when convicted of the crime of enticing a minor in certain circumstance; and

- ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a special effective date.

### **Utah Code Sections Affected:**

AMENDS:

**13-51-107**, as last amended by Laws of Utah 2020, Chapters 276, 377

**13-67-101**, as enacted by Laws of Utah 2023, Chapter 31

**26B-2-120**, as last amended by Laws of Utah 2023, Chapter 344 and renumbered and amended by Laws of Utah 2023, Chapter 305

**53-3-205**, as last amended by Laws of Utah 2023, Chapters 328, 454

**53-3-216**, as last amended by Laws of Utah 2019, Chapter 382

**53-3-804**, as last amended by Laws of Utah 2023, Chapter 328

**53-3-806.5**, as last amended by Laws of Utah 2019, Chapter 381

**53-3-807**, as last amended by Laws of Utah 2019, Chapters 381, 382

**53-10-404**, as last amended by Laws of Utah 2021, Chapter 262

**63G-2-302**, as last amended by Laws of Utah 2023, Chapters 329, 471

**63G-7-301**, as last amended by Laws of Utah 2023, Chapter 516

**63M-7-801**, as enacted by Laws of Utah 2023, Chapter 155

**76-1-201**, as last amended by Laws of Utah 2017, Chapter 282

**76-1-202**, as last amended by Laws of Utah 2017, Chapter 282

**76-3-402**, as last amended by Laws of Utah 2023, Chapter 132

**76-5-401**, as last amended by Laws of Utah 2023, Chapter 123

**76-5-401.1**, as last amended by Laws of Utah 2023, Chapter 123

**76-5-401.3**, as last amended by Laws of Utah 2023, Chapters 123, 161

**76-9-702**, as last amended by Laws of Utah 2023, Chapter 123

**76-9-702.1**, as last amended by Laws of Utah 2023, Chapter 123

**77-2-2.3**, as renumbered and amended by Laws of Utah 2021, Chapter 260

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77-11c-101, as renumbered and amended by Laws of Utah 2023, Chapter 448  
77-27-5.2, as enacted by Laws of Utah 2021, Chapter 410  
77-27-21.7, as last amended by Laws of Utah 2023, Chapters 18, 117  
77-27-21.8, as last amended by Laws of Utah 2015, Chapter 258  
77-38-605, as last amended by Laws of Utah 2023, Chapter 237  
77-40a-303, as last amended by Laws of Utah 2023, Chapter 265  
77-40a-403, as last amended by Laws of Utah 2023, Chapter 265  
77-41-102 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapters 123,  
128  
77-41-103 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapters 123,  
128  
77-41-105, as last amended by Laws of Utah 2023, Chapters 123, 124  
77-41-106, as last amended by Laws of Utah 2023, Chapters 123, 457  
77-41-107, as last amended by Laws of Utah 2023, Chapter 123  
77-41-109, as last amended by Laws of Utah 2023, Chapter 123  
77-41-110, as last amended by Laws of Utah 2023, Chapter 123  
77-41-112 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapters 124,  
128  
77-41-113, as last amended by Laws of Utah 2023, Chapter 123  
77-41-114, as enacted by Laws of Utah 2023, Chapter 123  
78B-8-302, as last amended by Laws of Utah 2023, Chapters 49, 123  
80-5-201, as last amended by Laws of Utah 2023, Chapter 123

### REPEALS:

77-41-101, as enacted by Laws of Utah 2012, Chapter 145  
77-43-101, as enacted by Laws of Utah 2017, Chapter 282  
~~{ 77-43-102 (Superseded 07/01/24), as last amended by Laws of Utah 2022, Chapter 430~~  
† 77-43-102 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapter 128  
77-43-103, as enacted by Laws of Utah 2017, Chapter 282  
~~{ 77-43-104 (Superseded 07/01/24), as enacted by Laws of Utah 2017, Chapter 282~~  
† 77-43-104 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapter 128  
77-43-105, as enacted by Laws of Utah 2017, Chapter 282

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77-43-106, as enacted by Laws of Utah 2017, Chapter 282

77-43-107, as enacted by Laws of Utah 2017, Chapter 282

77-43-108, as enacted by Laws of Utah 2017, Chapter 282

~~{ 77-43-109 (Superseded 07/01/24), as enacted by Laws of Utah 2017, Chapter 282~~

{ 77-43-109 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapter 128

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

Section 1. Section **13-51-107** is amended to read:

**13-51-107. Driver requirements.**

(1) Before a transportation network company allows an individual to use the transportation network company's software application as a transportation network driver, the transportation network company shall:

(a) require the individual to submit to the transportation network company:

(i) the individual's name, address, and age;

(ii) a copy of the individual's driver license, including the driver license number; and

(iii) proof that the vehicle that the individual will use to provide transportation network services is registered with the Division of Motor Vehicles;

(b) require the individual to consent to a criminal background check of the individual by the transportation network company or the transportation network company's designee; and

(c) obtain and review a report that lists the individual's driving history.

(2) A transportation company may not allow an individual to provide transportation network services as a transportation network driver if the individual:

(a) has committed more than three moving violations in the three years before the day on which the individual applies to become a transportation network driver;

(b) has been convicted, in the seven years before the day on which the individual applies to become a transportation network driver, of:

(i) driving under the influence of alcohol or drugs;

(ii) fraud;

(iii) a sexual offense;

(iv) a felony involving a motor vehicle;

(v) a crime involving property damage;

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(vi) a crime involving theft;

(vii) a crime of violence; or

(viii) an act of terror;

(c) is required to register as a sex offender, kidnap offender, or child abuse offender in accordance with [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry;

(d) does not have a valid Utah driver license; or

(e) is not at least 18 years [~~of age~~] old.

(3) (a) A transportation network company shall prohibit a transportation network driver from accepting a request for a prearranged ride if the motor vehicle that the transportation network driver uses to provide transportation network services fails to comply with:

(i) equipment standards described in Section 41-6a-1601; and

(ii) emission requirements adopted by a county under Section 41-6a-1642.

(b) (i) If upon visual inspection, a defect relating to the equipment standards described in Section 41-6a-1601 can be reasonably identified, an airport operator may perform a safety inspection of a transportation network driver's vehicle operating within the airport to ensure compliance with equipment standards described in Section 41-6a-1601.

(ii) An airport operator shall conduct all inspections under this Subsection (3) in such a manner to minimize impact to the transportation network driver's and transportation network company vehicle's availability to provide prearranged rides.

(4) A transportation network driver, while providing transportation network services, shall carry proof, in physical or electronic form, that the transportation network driver is covered by insurance that satisfies the requirements of Section 13-51-108.

Section 2. Section **13-67-101** is amended to read:

### **13-67-101. Definitions.**

As used in this chapter:

(1) "Banned member" means a member whose account or profile is the subject of a fraud ban.

(2) "Criminal background screening" means a name search for an individual's criminal conviction and is conducted by searching:

(a) available and regularly updated government public record databases that in the

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aggregate provide national coverage for criminal conviction records; or

(b) a regularly updated database with national coverage of criminal conviction records and sexual offender registries maintained by a private vendor.

(3) (a) "Criminal conviction" means a conviction for a crime in this state, another state, or under federal law.

(b) "Criminal conviction" includes an offense that would require registration under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or under a similar law in a different jurisdiction.

(4) "Division" means the Division of Consumer Protection in the Department of Commerce.

(5) "Fraud ban" means the expulsion of a member from an online dating service because, in the judgment of the online dating service provider, there is a significant risk the member will attempt to obtain money from another member through fraudulent means.

(6) "Member" means an individual who submits to an online dating service provider the information required by the online dating service provider to access the online dating service provider's online dating service.

(7) "Online dating service" means a product or service that is:

(a) conducted through a website or a mobile application; and

(b) primarily marketed and intended to offer a member access to dating or romantic relationships with another member by arranging or facilitating the social introduction of members.

(8) "Online dating service provider" means a person predominately engaged in the business of offering an online dating service.

(9) "Utah member" means a member who provides a Utah billing address or zip code when registering with an online dating service provider.

Section 3. Section **26B-2-120** is amended to read:

**26B-2-120. Background check -- Direct access to children or vulnerable adults.**

(1) As used in this section:

(a) (i) "Applicant" means, notwithstanding Section 26B-2-101:

(A) an individual who applies for an initial license or certification or a license or certification renewal under this part;

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(B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;

(C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(D) a department contractor;

(E) an individual who transports a child for a youth transportation company;

(F) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and resides in a home, that is licensed or certified by the office; or

(G) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

(ii) "Applicant" does not include:

(A) an individual who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services; or

(B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services.

(b) "Application" means a background screening application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Certified peer support specialist" means the same as that term is defined in Section 26B-5-610.

(e) "Criminal finding" means a record of:

(i) an arrest or a warrant for an arrest;

(ii) charges for a criminal offense; or

(iii) a criminal conviction.

(f) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

(g) "Mental health professional" means an individual who:

(i) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and

(ii) engaged in the practice of mental health therapy.

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(h) "Non-criminal finding" means a record maintained in:

(i) the Division of Child and Family Services' Management Information System described in Section 80-2-1001;

(ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

(iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;

(iv) the Sex ~~[and], Kidnap, and Child Abuse~~ Offender Registry described in [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry; or

(v) a state child abuse or neglect registry.

(i) (i) "Peer support specialist" means an individual who:

(A) has a disability or a family member with a disability, or is in recovery from a mental illness or a substance use disorder; and

(B) uses personal experience to provide support, guidance, or services to promote resiliency and recovery.

(ii) "Peer support specialist" includes a certified peer support specialist.

(iii) "Peer support specialist" does not include a mental health professional.

(j) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

(v) driver license or other government-issued identification;

(vi) social security number;

(vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(k) "Practice of mental health therapy" means the same as that term is defined in Section 58-60-102.



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(2) Except as provided in Subsection ~~(1)~~(12), an applicant or a representative shall submit the following to the office:

(a) personal identifying information;

(b) a fee established by the office under Section 63J-1-504; and

(c) a disclosure form, specified by the office, for consent for:

(i) an initial background check upon submission of the information described in this Subsection (2);

(ii) ongoing monitoring of fingerprints and registries until no longer associated with a licensee for 90 days;

(iii) a background check when the office determines that reasonable cause exists; and

(iv) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4); and

(d) if an applicant resided outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsections (2)(a) through (c) is submitted to the office, documentation establishing whether the applicant was convicted of a crime during the time that the applicant resided outside of the United States or its territories.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;

(iii) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

(iv) if the applicant is applying to become a prospective foster or adoptive parent, search the Division of Child and Family Services' Management Information System described in Section 80-2-1001 for:

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- (A) the applicant; and
  - (B) any adult living in the applicant's home;
  - (v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
  - (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
  - (vii) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404; and
  - (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;
- (b) shall conduct a background check of an applicant for an initial background check upon submission of the information described in Subsection (2);
- (c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (i) for an annual renewal; or
  - (ii) when the office determines that reasonable cause exists;
- (d) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;
- (e) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:
- (i) more than one license;
  - (ii) direct access to a child or a vulnerable adult in more than one human services program; or
  - (iii) direct access to a child or a vulnerable adult under a contract with the department;
- (f) shall track the status of each individual with direct access to a child or a vulnerable adult and notify the bureau within 90 days after the day on which the license expires or the individual's direct access to a child or a vulnerable adult ceases;
- (g) shall adopt measures to strictly limit access to personal identifying information

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solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);

(h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a congregate care program, shall:

(i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and

(ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the applicant submits the information described in Subsection (2) to the office; and

(i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

(4) (a) With the personal identifying information the office submits to the bureau under Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and

(ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.

(d) The bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

(i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and

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(ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.

(e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.

(f) Upon notice that an individual's direct access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

(i) discard and destroy any retained fingerprints; and

(ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5) (a) Except as provided in Subsection (5)(b), after conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within three years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of:

(i) a felony or misdemeanor involving conduct that constitutes any of the following:

(A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;

(B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;

(C) sexual solicitation;

(D) an offense included in Title 76, Chapter 5, Offenses Against the Individual, Title 76, Chapter 5b, Sexual Exploitation Act, Title 76, Chapter 4, Part 4, Enticement of a Minor, or Title 76, Chapter 7, Offenses Against the Family;

(E) aggravated arson, as described in Section 76-6-103;

(F) aggravated burglary, as described in Section 76-6-203;

(G) aggravated robbery, as described in Section 76-6-302;

(H) identity fraud crime, as described in Section 76-6-1102;

(I) sexual battery, as described in Section 76-9-702.1; or

(J) a violent offense committed in the presence of a child, as described in Section 76-3-203.10; or

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(ii) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsection (5)(a)(i).

(b) (i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider, a mental health professional, or in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.

(ii) The office shall conduct a comprehensive review of an applicant described in Subsection (5)(b)(i) in accordance with Subsection (6).

(6) The office shall conduct a comprehensive review of an applicant's background check if the applicant:

(a) has a felony or class A misdemeanor conviction for an offense described in Subsection (5) with a date of conviction that is more than three years before the date on which the applicant submits the information described in Subsection (2);

(b) has a felony charge or conviction for an offense not described in Subsection (5) with a date of charge or conviction that is no more than 10 years before the date on which the applicant submits the application under Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;

(c) has a class B misdemeanor or class C misdemeanor conviction for an offense described in Subsection (5) with a date of conviction that is more than three years after, and no more than 10 years before, the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;

(d) has a misdemeanor conviction for an offense not described in Subsection (5) with a date of conviction that is no more than three years before the date on which the applicant submits information described in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;

(e) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5);

(f) appears on the Sex ~~[and], Kidnap, and Child Abuse Offender Registry~~ described in ~~[Title 77, Chapter 41, Sex and Kidnap Offender Registry]~~ Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry;

(g) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

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(i) under 28 years old; or

(ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5);

(h) has a pending charge for an offense described in Subsection (5);

(i) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the listing;

(j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the listing;

(k) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the finding;

(l) (i) is seeking a position:

(A) as a peer support provider;

(B) as a mental health professional; or

(C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder; and

(ii) within three years before the day on which the applicant submits the information described in Subsection (2):

(A) has a felony or misdemeanor charge or conviction;

(B) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

(C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210; or

(D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504;

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- (m) (i) (A) is seeking a position in a congregate care program;
  - (B) is seeking to become a prospective foster or adoptive parent; or
  - (C) is an applicant described in Subsection (1)(a)(i)(F); and
  - (ii) (A) has an infraction conviction for conduct that constitutes an offense or violation described in Subsection (5)(a)(i)(A) or (B);
  - (B) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
  - (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
  - (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or
  - (E) has a listing on the registry check described in Subsection (13)(a) as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102; or
  - (n) is seeking to become a prospective foster or adoptive parent and has, or has an adult living with the applicant who has, a conviction, finding, or listing described in Subsection (6)(m)(ii).
- (7) (a) The comprehensive review shall include an examination of:
- (i) the date of the offense or incident;
  - (ii) the nature and seriousness of the offense or incident;
  - (iii) the circumstances under which the offense or incident occurred;
  - (iv) the age of the perpetrator when the offense or incident occurred;
  - (v) whether the offense or incident was an isolated or repeated incident;
  - (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
    - (A) actual or threatened, nonaccidental physical, mental, or financial harm;
    - (B) sexual abuse;
    - (C) sexual exploitation; or
    - (D) negligent treatment;
    - (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and

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(viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying.

(b) At the conclusion of the comprehensive review, the office shall deny an application to an applicant if the office finds:

(i) that approval would likely create a risk of harm to a child or a vulnerable adult; or

(ii) an individual is prohibited from having direct access to a child or vulnerable adult by court order.

(8) The office shall approve an application to an applicant who is not denied under this section.

(9) (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (11), without requiring that the applicant be directly supervised, if the office:

(i) is awaiting the results of the criminal history search of national criminal background databases; and

(ii) would otherwise approve an application of the applicant under this section.

(b) The office may conditionally approve an application of an applicant, for a maximum of one year after the day on which the office sends written notice to the applicant under Subsection (11), without requiring that the applicant be directly supervised if the office:

(i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and

(ii) would otherwise approve an application of the applicant under this section.

(c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall approve or deny the application of the applicant in accordance with this section.

(10) (a) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult without being directly supervised unless:

(i) the individual is associated with the licensee or department contractor and the department conducts a background screening in accordance with this section;

(ii) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;

(iii) the individual is approved by the parent or guardian of the child, or the guardian of



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the vulnerable adult, to have direct access to the child or the vulnerable adult;

(iv) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or

(v) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.

(b) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(11) (a) Within 30 days after the day on which the applicant submits the information described in Subsection (2), the office shall notify the applicant of any potentially disqualifying criminal findings or non-criminal findings.

(b) If the notice under Subsection (11)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 26B-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this part:

(i) defining procedures for the challenge of the office's background check decision described in Subsection (11)(b); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(12) (a) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is exempt from this section.

(b) The exemption described in Subsection (12)(a) does not extend to a program director or a member, as defined by Section 26B-2-105, of the program.

(13) (a) Except as provided in Subsection (13)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of giving clearance status to an applicant seeking a position in a congregate care program or an applicant seeking to become a prospective foster or adoptive parent, the office shall:

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(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the prospective foster or adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (13)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(b) The requirements described in Subsection (13)(a) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

(B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (10), the office shall deny a clearance to an applicant seeking a position in a congregate care program or an applicant to become a prospective foster or adoptive parent if the applicant has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-114;

(C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

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- (K) child kidnapping, as described in Section 76-5-301.1;
- (L) aggravated kidnapping, as described in Section 76-5-302;
- (M) human trafficking of a child, as described in Section 76-5-308.5;
- (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (O) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual

Exploitation Act;

- (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- (Q) aggravated arson, as described in Section 76-6-103;
- (R) aggravated burglary, as described in Section 76-6-203;
- (S) aggravated robbery, as described in Section 76-6-302;
- (T) lewdness involving a child, as described in Section 76-9-702.5;
- (U) incest, as described in Section 76-7-102; or
- (V) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would

constitute a violation of an offense described in Subsection (13)(c)(i).

(d) Notwithstanding Subsections (5) through (10), the office shall deny a license or license renewal to an individual seeking a position in a congregate care program or a prospective foster or adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the individual was convicted of a felony involving conduct that constitutes a violation of any of the following:

- (i) aggravated assault, as described in Section 76-5-103;
- (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- (iii) mayhem, as described in Section 76-5-105;
- (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

Act;

- (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

Precursor Act; or

- (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

- (e) In addition to the circumstances described in Subsection (6), the office shall

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conduct the comprehensive review of an applicant's background check under this section if the registry check described in Subsection (13)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102.

(14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this part, to:

(a) establish procedures for, and information to be examined in, the comprehensive review described in Subsections (6) and (7); and

(b) determine whether to consider an offense or incident that occurred while an individual was in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services for purposes of approval or denial of an application for a prospective foster or adoptive parent.

Section 4. Section **53-3-205** is amended to read:

**53-3-205. Application for license or endorsement -- Fee required -- Tests -- Expiration dates of licenses and endorsements -- Information required -- Previous licenses surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required -- License agreement.**

(1) An application for an original license, provisional license, or endorsement shall be:

(a) made upon a form furnished by the division; and

(b) accompanied by a nonrefundable fee set under Section 53-3-105.

(2) An application and fee for an original provisional class D license or an original class D license entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and the skills tests for a class D license within six months after the date of the application;

(b) a learner permit if needed pending completion of the application and testing process; and

(c) an original class D license and license certificate after all tests are passed and requirements are completed.

(3) An application and fee for a motorcycle or taxicab endorsement entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and skills tests within six

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months after the date of the application;

(b) a motorcycle learner permit after the motorcycle knowledge test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(4) An application for a commercial class A, B, or C license entitles the applicant to:

(a) not more than two attempts to pass a knowledge test when accompanied by the fee provided in Subsection 53-3-105(18);

(b) not more than two attempts to pass a skills test when accompanied by a fee in Subsection 53-3-105(19) within six months after the date of application;

(c) both a commercial driver instruction permit and a temporary license permit for the license class held before the applicant submits the application if needed after the knowledge test is passed; and

(d) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(5) An application and fee for a CDL endorsement entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months after the date of the application; and

(b) a CDL endorsement when all tests are passed.

(6) (a) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test within the number of attempts provided in Subsection (4) or (5), each test may be taken two additional times within the six months for the fee provided in Section 53-3-105.

(b) (i) An out-of-state resident who holds a valid CDIP issued by a state or jurisdiction that is compliant with 49 C.F.R. Part 383 may take a skills test administered by the division if the out-of-state resident pays the fee provided in Subsection 53-3-105(19).

(ii) The division shall:

(A) electronically transmit skills test results for an out-of-state resident to the licensing agency in the state or jurisdiction in which the out-of-state resident has obtained a valid CDIP; and

(B) provide the out-of-state resident with documentary evidence upon successful completion of the skills test.

(7) (a) (i) Except as provided under Subsections (7)(a)(ii), (f), and (g), an original class D license expires on the birth date of the applicant in the eighth year after the year the license

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certificate was issued.

(ii) An original provisional class D license expires on the birth date of the applicant in the fifth year following the year the license certificate was issued.

(iii) Except as provided in Subsection (7)(f), a limited term class D license expires on the birth date of the applicant in the fifth year the license certificate was issued.

(b) Except as provided under Subsections (7)(f) and (g), a renewal or an extension to a license expires on the birth date of the licensee in the eighth year after the expiration date of the license certificate renewed or extended.

(c) Except as provided under Subsections (7)(f) and (g), a duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate regardless of the date the endorsement was granted.

(e) (i) A regular license certificate and an endorsement to the regular license certificate held by an individual described in Subsection (7)(e)(ii), that expires during the time period the individual is stationed outside of the state, is valid until 90 days after the individual's orders are terminated, the individual is discharged, or the individual's assignment is changed or terminated, unless:

(A) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(B) the licensee updates the information or photograph on the license certificate.

(ii) The provisions in Subsection (7)(e)(i) apply to an individual:

(A) ordered to active duty and stationed outside of Utah in any of the armed forces of the United States;

(B) who is an immediate family member or dependent of an individual described in Subsection (7)(e)(ii)(A) and is residing outside of Utah;

(C) who is a civilian employee of the United States State Department or United States Department of Defense and is stationed outside of the United States; or

(D) who is an immediate family member or dependent of an individual described in Subsection (7)(e)(ii)(C) and is residing outside of the United States.

(f) (i) Except as provided in Subsection (7)(f)(ii), a limited-term license certificate or a renewal to a limited-term license certificate expires:

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(A) on the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided under this Subsection (7), whichever is sooner; or

(B) on the date of issuance in the first year following the year that the limited-term license certificate was issued if there is no definite end to the individual's period of authorized stay.

(ii) A limited-term license certificate or a renewal to a limited-term license certificate issued to an approved asylee or a refugee expires on the birth date of the applicant in the fifth year following the year that the limited-term license certificate was issued.

(g) A driving privilege card issued or renewed under Section 53-3-207 expires on the birth date of the applicant in the first year following the year that the driving privilege card was issued or renewed.

(8) (a) In addition to the information required by Title 63G, Chapter 4, Administrative Procedures Act, for requests for agency action, an applicant shall:

(i) provide:

(A) the applicant's full legal name;

(B) the applicant's birth date;

(C) the applicant's sex;

(D) (I) documentary evidence of the applicant's valid social security number;

(II) written proof that the applicant is ineligible to receive a social security number;

(III) the applicant's temporary identification number (ITIN) issued by the Internal

Revenue Service for an individual who:

(Aa) does not qualify for a social security number; and

(Bb) is applying for a driving privilege card; or

(IV) other documentary evidence approved by the division;

(E) the applicant's Utah residence address as documented by a form or forms

acceptable under rules made by the division under Section 53-3-104, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b); and

(F) fingerprints, or a fingerprint confirmation form described in Subsection 53-3-205.5(1)(a)(ii), and a photograph in accordance with Section 53-3-205.5 if the applicant is applying for a driving privilege card;

(ii) provide evidence of the applicant's lawful presence in the United States by

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providing documentary evidence:

(A) that the applicant is:

(I) a United States citizen;

(II) a United States national; or

(III) a legal permanent resident alien; or

(B) of the applicant's:

(I) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(II) pending or approved application for asylum in the United States;

(III) admission into the United States as a refugee;

(IV) pending or approved application for temporary protected status in the United States;

(V) approved deferred action status;

(VI) pending application for adjustment of status to legal permanent resident or conditional resident; or

(VII) conditional permanent resident alien status;

(iii) provide a description of the applicant;

(iv) state whether the applicant has previously been licensed to drive a motor vehicle and, if so, when and by what state or country;

(v) state whether the applicant has ever had a license suspended, cancelled, revoked, disqualified, or denied in the last 10 years, or whether the applicant has ever had a license application refused, and if so, the date of and reason for the suspension, cancellation, revocation, disqualification, denial, or refusal;

(vi) state whether the applicant intends to make an anatomical gift under Title 26B, Chapter 8, Part 3, Revised Uniform Anatomical Gift Act, in compliance with Subsection (15);

(vii) state whether the applicant is required to register as a sex offender, kidnap offender, or child abuse offender, in accordance with [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry;

(viii) state whether the applicant is a veteran of the United States military, provide verification that the applicant was granted an honorable or general discharge from the United States Armed Forces, and state whether the applicant does or does not authorize sharing the



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information with the Department of Veterans and Military Affairs;

(ix) provide all other information the division requires; and

(x) sign the application which signature may include an electronic signature as defined in Section 46-4-102.

(b) Unless the applicant provides acceptable verification of homelessness as described in rules made by the division, an applicant shall have a Utah residence address, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b).

(c) An applicant shall provide evidence of lawful presence in the United States in accordance with Subsection (8)(a)(ii), unless the application is for a driving privilege card.

(d) The division shall maintain on the division's computerized records an applicant's:

(i) (A) social security number;

(B) temporary identification number (ITIN); or

(C) other number assigned by the division if Subsection (8)(a)(i)(D)(IV) applies; and

(ii) indication whether the applicant is required to register as a sex offender, kidnap offender, or child abuse offender in accordance with [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry.

(9) The division shall require proof of an applicant's name, birth date, and birthplace by at least one of the following means:

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof, including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

(10) (a) Except as provided in Subsection (10)(c), if an applicant receives a license in a higher class than what the applicant originally was issued:

(i) the license application is treated as an original application; and

(ii) license and endorsement fees is assessed under Section 53-3-105.

(b) An applicant that receives a downgraded license in a lower license class during an existing license cycle that has not expired:

(i) may be issued a duplicate license with a lower license classification for the remainder of the existing license cycle; and

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(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(25) if a duplicate license is issued under Subsection (10)(b)(i).

(c) An applicant who has received a downgraded license in a lower license class under Subsection (10)(b):

(i) may, when eligible, receive a duplicate license in the highest class previously issued during a license cycle that has not expired for the remainder of the existing license cycle; and

(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(25) if a duplicate license is issued under Subsection (10)(c)(i).

(11) (a) When an application is received from an applicant previously licensed in another state to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

(b) When received, the driver's record becomes part of the driver's record in this state with the same effect as though entered originally on the driver's record in this state.

(12) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license is accompanied by the additional fee or fees specified in Section 53-3-105.

(13) An individual who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 53-3-105.

(14) An applicant who applies for an original license or renewal of a license agrees that the individual's license is subject to a suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(15) (a) A licensee shall authenticate the indication of intent under Subsection (8)(a)(vi) in accordance with division rule.

(b) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26B-8-301, the names and addresses of all applicants who, under Subsection (8)(a)(vi), indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

(A) obtain additional information for an anatomical gift registry; and

(B) inform licensees of anatomical gift options, procedures, and benefits.

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(16) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may release to the Department of Veterans and Military Affairs the names and addresses of all applicants who indicate their status as a veteran under Subsection (8)(a)(viii).

(17) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division shall, upon request, release to the Sex ~~[and]~~, Kidnap, and Child Abuse Offender Registry office in the Department of ~~[Corrections]~~ Public Safety, the names and addresses of all applicants who, under Subsection (8)(a)(vii), indicate they are required to register as a sex offender, kidnap offender, or child abuse offender in accordance with ~~[Title 77, Chapter 41, Sex and Kidnap Offender Registry]~~ Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry.

(18) The division and its employees are not liable, as a result of false or inaccurate information provided under Subsection (8)(a)(vi) or (viii), for direct or indirect:

- (a) loss;
- (b) detriment; or
- (c) injury.

(19) An applicant who knowingly fails to provide the information required under Subsection (8)(a)(vii) is guilty of a class A misdemeanor.

(20) A person may not hold both an unexpired Utah license certificate and an unexpired identification card.

(21) (a) An applicant who applies for an original motorcycle endorsement to a regular license certificate is exempt from the requirement to pass the knowledge and skills test to be eligible for the motorcycle endorsement if the applicant:

- (i) is a resident of the state of Utah;
- (ii) (A) is ordered to active duty and stationed outside of Utah in any of the armed forces of the United States; or

(B) is an immediate family member or dependent of an individual described in Subsection (21)(a)(ii)(A) and is residing outside of Utah;

- (iii) has a digitized driver license photo on file with the division;
- (iv) provides proof to the division of the successful completion of a certified Motorcycle Safety Foundation rider training course; and

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(v) provides the necessary information and documentary evidence required under Subsection (8).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:

(i) establishing the procedures for an individual to obtain a motorcycle endorsement under this Subsection (21); and

(ii) identifying the applicable restrictions for a motorcycle endorsement issued under this Subsection (21).

Section 5. Section **53-3-216** is amended to read:

**53-3-216. Change of address -- Duty of licensee to notify division within 10 days -- Change of name -- Proof necessary -- Method of giving notice by division.**

(1) (a) Except as provided in Subsection (1)(b), if an individual, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to the individual, the individual shall, within 10 days after the day on which the individual moves, notify the division in a manner specified by the division of the individual's new address and the number of any license certificate held by the individual.

(b) If an individual who is required to register as a sex offender, kidnap offender, or child abuse offender under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to the individual, the individual shall, within 30 days after the day on which the individual moves, apply for an updated license in-person at a division office.

(2) If an applicant requests to change the surname on the applicant's license, the division shall issue a substitute license with the new name upon receiving an application and fee for a duplicate license and any of the following proofs of the applicant's full legal name:

(a) an original or certified copy of the applicant's marriage certificate;

(b) a certified copy of a court order under Title 42, Chapter 1, Change of Name, showing the name change;

(c) an original or certified copy of a birth certificate issued by a government agency;

(d) a certified copy of a divorce decree or annulment granted the applicant that specifies the name change requested; or

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(e) a certified copy of a divorce decree that does not specify the name change requested together with:

- (i) an original or certified copy of the applicant's birth certificate;
- (ii) the applicant's marriage license;
- (iii) a driver license record showing use of a maiden name; or
- (iv) other documentation the division finds acceptable.

(3) (a) If the division is authorized or required to give a notice under this chapter or other law regulating the operation of vehicles, the notice shall, unless otherwise prescribed, be given by:

- (i) personal delivery to the individual to be notified; or
- (ii) deposit in the United States mail with postage prepaid, addressed to the individual at the individual's address as shown by the records of the division.

(b) The giving of notice by mail is complete upon the expiration of four days after the deposit of the notice.

(c) Proof of the giving of notice in either manner may be made by the certificate of an officer or employee of the division or affidavit of an individual 18 years of age or older, naming the individual to whom the notice was given and specifying the time, place, and manner of giving the notice.

(4) The division may use state mailing or United States Postal Service information to:

- (a) verify an address on an application or on records of the division; and
- (b) correct mailing addresses in the division's records.

(5) A violation of the provisions of Subsection (1) is an infraction.

Section 6. Section **53-3-804** is amended to read:

**53-3-804. Application for identification card -- Required information -- Release of anatomical gift information -- Cancellation of identification card.**

(1) To apply for a regular identification card or limited-term identification card, an applicant shall:

- (a) be a Utah resident;
- (b) have a Utah residence address; and
- (c) appear in person at any license examining station.

(2) An applicant shall provide the following information to the division:

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- (a) true and full legal name and Utah residence address;
- (b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other satisfactory evidence of birth, which shall be attached to the application;
- (c) (i) social security number; or
- (ii) written proof that the applicant is ineligible to receive a social security number;
- (d) place of birth;
- (e) height and weight;
- (f) color of eyes and hair;
- (g) signature;
- (h) photograph;
- (i) evidence of the applicant's lawful presence in the United States by providing documentary evidence:
  - (i) that the applicant is:
    - (A) a United States citizen;
    - (B) a United States national; or
    - (C) a legal permanent resident alien; or
  - (ii) of the applicant's:
    - (A) unexpired immigrant or nonimmigrant visa status for admission into the United States;
    - (B) pending or approved application for asylum in the United States;
    - (C) admission into the United States as a refugee;
    - (D) pending or approved application for temporary protected status in the United States;
    - (E) approved deferred action status;
    - (F) pending application for adjustment of status to legal permanent resident or conditional resident; or
    - (G) conditional permanent resident alien status;
  - (j) an indication whether the applicant intends to make an anatomical gift under Title 26B, Chapter 8, Part 3, Revised Uniform Anatomical Gift Act;
  - (k) an indication whether the applicant is required to register as a sex offender, kidnap offender, or child abuse offender in accordance with [~~Title 77, Chapter 41, Sex and Kidnap~~

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~~Offender Registry]~~ Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry; and

(1) an indication whether the applicant is a veteran of the United States Armed Forces, verification that the applicant has received an honorable or general discharge from the United States Armed Forces, and an indication whether the applicant does or does not authorize sharing the information with the state Department of Veterans and Military Affairs.

(3) (a) The requirements of Section 53-3-234 apply to this section for each individual, age 16 and older, applying for an identification card.

(b) Refusal to consent to the release of information under Section 53-3-234 shall result in the denial of the identification card.

(4) An individual person who knowingly fails to provide the information required under Subsection (2)(k) is guilty of a class A misdemeanor.

(5) (a) A person may not hold both an unexpired Utah license certificate and an unexpired identification card.

(b) A person who holds a regular or limited term Utah driver license and chooses to relinquish the person's driving privilege may apply for an identification card under this chapter, provided:

(i) the driver:

(A) no longer qualifies for a driver license for failure to meet the requirement in Section 53-3-304; or

(B) makes a personal decision to permanently discontinue driving; ~~and~~

(ii) the driver:

(A) submits an application to the division on a form approved by the division in person, through electronic means, or by mail;

(B) affirms their intention to permanently discontinue driving; and

(C) surrenders to the division the driver license certificate; and

(iii) the division possesses a digital photograph of the driver obtained within the preceding 10 years.

(c) (i) The division shall waive the fee under Section 53-3-105 for an identification card for an original identification card application under this Subsection (5).

(ii) The fee waiver described in Subsection (5)(c)(i) does not apply to a person whose driving privilege is suspended or revoked.

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(6) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division shall, upon request, release to the Sex ~~[and]~~, Kidnap, and Child Abuse Offender Registry office in the Department of ~~[Corrections]~~ Public Safety, the names and addresses of all applicants who, under Subsection (2)(k), indicate they are required to register as a sex offender, kidnap offender, or child abuse offender in accordance with ~~[Title 77, Chapter 41, Sex and Kidnap Offender Registry]~~ Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry.

Section 7. Section **53-3-806.5** is amended to read:

### **53-3-806.5. Identification card required if offender does not have driver license.**

(1) (a) ~~[If a person is]~~ An individual who does not hold a current driver license in compliance with Section 53-3-205 and is required to register as a sex offender, kidnap offender, or child abuse offender in accordance with [Title 77, Chapter 41, Sex and Kidnap Offender Registry or as a child abuse offender in accordance with Title 77, Chapter 43, Child Abuse Offender Registry {~~Title 77~~}, {~~Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry~~, ] and the person does not hold a current driver license in compliance with Section 53-3-205, the person] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, shall obtain an identification card.

(b) The ~~[person]~~ individual shall maintain a current identification card during ~~[any time the person]~~ the time the individual is required to register as a sex offender, kidnap offender, or child abuse offender and the ~~[person]~~ individual does not hold a valid driver license.

(2) Failure to maintain a current identification card as required under Subsection (1) is a class A misdemeanor for each month of violation of Subsection (1).

Section 8. Section **53-3-807** is amended to read:

### **53-3-807. Expiration -- Address and name change -- Extension.**

(1) (a) A regular identification card expires on the birth date of the applicant in the fifth year after the issuance of the regular identification card.

(b) A limited-term identification card expires on:

(i) the expiration date of the period of time of the individual's authorized stay in the United States or on the birth date of the applicant in the fifth year after the issuance of the limited-term identification card, whichever is sooner; or

(ii) on the date of issuance in the first year after the year that the limited-term



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identification card was issued if there is no definite end to the individual's period of authorized stay.

(2) (a) Except as provided in Subsection (2)(b), if an individual has applied for and received an identification card and subsequently moves from the address shown on the application or on the card, the individual shall, within 10 days after the day on which the individual moves, notify the division in a manner specified by the division of the individual's new address.

(b) If an individual who is required to register as a sex offender, kidnap offender, or child abuse offender under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, has applied for and received an identification card and subsequently moves from the address shown on the application or on the card, the individual shall, within 30 days after the day on which the individual moves, apply for an updated identification card in-person at a division office.

(3) If an individual has applied for and received an identification card and subsequently changes the individual's name under Title 42, Chapter 1, Change of Name, the individual:

(a) shall surrender the card to the division; and

(b) may apply for a new card in the individual's new name by:

(i) furnishing proper documentation to the division as provided in Section 53-3-804;

and

(ii) paying the fee required under Section 53-3-105.

(4) A person 21 years [~~of age~~] old or older with a disability, as defined under the Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on an identification card for five years if the person with a disability or an agent of the person with a disability:

(a) requests that the division send the application form to obtain the extension or requests an application form in person at the division's offices;

(b) completes the application;

(c) certifies that the extension is for a person 21 years [~~of age~~] old or older with a disability; and

(d) returns the application to the division together with the identification card fee required under Section 53-3-105.

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(5) (a) The division may extend a valid regular identification card issued after January 1, 2010, for five years at any time within six months before the day on which the identification card expires.

(b) The application for an extension of a regular identification card is accompanied by a fee under Section 53-3-105.

(c) The division shall allow extensions:

(i) by mail, electronic means, or other means as determined by the division at the appropriate extension fee rate under Section 53-3-105; and

(ii) only if the applicant qualifies under this section.

(6) (a) A regular identification card may only be extended once under Subsections (4) and (5).

(b) After an extension an application for an identification card must be applied for in person at the division's offices.

Section 9. Section **53-10-404** is amended to read:

### **53-10-404. DNA specimen analysis -- Requirement to obtain the specimen.**

(1) As used in this section, "person" refers to any person as described under Section 53-10-403.

(2) (a) A person under Section 53-10-403 or any person required to register as a sex offender, kidnap offender, or child abuse offender under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, shall provide a DNA specimen and shall reimburse the agency responsible for obtaining the DNA specimen \$150 for the cost of obtaining the DNA specimen unless:

(i) the person was booked under Section 53-10-403 and is not required to reimburse the agency under Section 53-10-404.5; or

(ii) the agency determines the person lacks the ability to pay.

(b) (i) (A) The responsible agencies shall establish guidelines and procedures for determining if the person is able to pay the fee.

(B) An agency's implementation of Subsection (2)(b)(i) meets an agency's obligation to determine an inmate's ability to pay.

(ii) An agency's guidelines and procedures may provide for the assessment of \$150 on the inmate's county trust fund account and may allow a negative balance in the account until

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the \$150 is paid in full.

(3) (a) (i) All fees collected under Subsection (2) shall be deposited [in] into the DNA Specimen Restricted Account created in Section 53-10-407, except that the agency collecting the fee may retain not more than \$25 per individual specimen for the costs of obtaining the saliva DNA specimen.

(ii) The agency collecting the \$150 fee may not retain from each separate fee more than \$25, and no amount of the \$150 fee may be credited to any other fee or agency obligation.

(b) The responsible agency shall determine the method of collecting the DNA specimen. Unless the responsible agency determines there are substantial reasons for using a different method of collection or the person refuses to cooperate with the collection, the preferred method of collection shall be obtaining a saliva specimen.

(c) The responsible agency may use reasonable force, as established by its guidelines and procedures, to collect the DNA sample if the person refuses to cooperate with the collection.

(d) If the judgment places the person on probation, the person shall submit to the obtaining of a DNA specimen as a condition of the probation.

(e) (i) Under this section a person is required to provide one DNA specimen and pay the collection fee as required under this section.

(ii) The person shall provide an additional DNA specimen only if the DNA specimen previously provided is not adequate for analysis.

(iii) The collection fee is not imposed for a second or subsequent DNA specimen collected under this section.

(f) Any agency that is authorized to obtain a DNA specimen under this part may collect any outstanding amount of a fee due under this section from any person who owes any portion of the fee and deposit the amount in the DNA Specimen Restricted Account created in Section 53-10-407.

(4) (a) The responsible agency shall cause a DNA specimen to be obtained as soon as possible and transferred to the Department of Public Safety:

(i) after a conviction or a finding of jurisdiction by the juvenile court;

(ii) on and after January 1, 2011, through December 31, 2014, after the booking of a person for any offense under Subsection 53-10-403(1)(c); and

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(iii) on and after January 1, 2015, after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(ii).

(b) On and after May 13, 2014, through December 31, 2014, the responsible agency may cause a DNA specimen to be obtained and transferred to the Department of Public Safety after the booking of a person for any felony offense, as provided under Subsection 53-10-403(1)(d)(i).

(c) If notified by the Department of Public Safety that a DNA specimen is not adequate for analysis, the agency shall, as soon as possible:

(i) obtain and transmit an additional DNA specimen; or

(ii) request that another agency that has direct access to the person and that is authorized to collect DNA specimens under this section collect the necessary second DNA specimen and transmit it to the Department of Public Safety.

(d) Each agency that is responsible for collecting DNA specimens under this section shall establish:

(i) a tracking procedure to record the handling and transfer of each DNA specimen it obtains; and

(ii) a procedure to account for the management of all fees it collects under this section.

(5) (a) The Department of Corrections is the responsible agency whenever the person is committed to the custody of or is under the supervision of the Department of Corrections.

(b) The juvenile court is the responsible agency regarding a minor under Subsection 53-10-403(3), but if the minor has been committed to the legal custody of the Division of Juvenile Justice Services, that division is the responsible agency if a DNA specimen of the minor has not previously been obtained by the juvenile court under Section 80-6-608.

(c) The sheriff operating a county jail is the responsible agency regarding the collection of DNA specimens from persons who:

(i) have pled guilty to or have been convicted of an offense listed under Subsection 53-10-403(2) but who have not been committed to the custody of or are not under the supervision of the Department of Corrections;

(ii) are incarcerated in the county jail:

(A) as a condition of probation for a felony offense; or

(B) for a misdemeanor offense for which collection of a DNA specimen is required;

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(iii) on and after January 1, 2011, through May 12, 2014, are booked at the county jail for any offense under Subsection 53-10-403(1)(c)[~~7~~]; and

(iv) are booked at the county jail:

(A) by a law enforcement agency that is obtaining a DNA specimen for any felony offense on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b); or

(B) on or after January 1, 2015, for any felony offense.

(d) Each agency required to collect a DNA specimen under this section shall:

(i) designate employees to obtain the saliva DNA specimens required under this section; and

(ii) ensure that employees designated to collect the DNA specimens receive appropriate training and that the specimens are obtained in accordance with generally accepted protocol.

(6) (a) As used in this Subsection (6), "department" means the Department of Corrections.

(b) Priority of obtaining DNA specimens by the department is:

(i) first, to obtain DNA specimens of persons who as of July 1, 2002, are in the custody of or under the supervision of the department before these persons are released from incarceration, parole, or probation, if their release date is prior to that of persons under Subsection (6)(b)(ii), but in no case later than July 1, 2004; and

(ii) second, the department shall obtain DNA specimens from persons who are committed to the custody of the department or who are placed under the supervision of the department after July 1, 2002, within 120 days after the commitment, if possible, but not later than prior to release from incarceration if the person is imprisoned, or prior to the termination of probation if the person is placed on probation.

(c) The priority for obtaining DNA specimens from persons under Subsection (6)(b)(ii) is:

(i) first, persons on probation;

(ii) second, persons on parole; and

(iii) third, incarcerated persons.

(d) Implementation of the schedule of priority under Subsection (6)(c) is subject to the priority of Subsection (6)(b)(i), to ensure that the Department of Corrections obtains DNA

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specimens from persons in the custody of or under the supervision of the Department of Corrections as of July 1, 2002, prior to their release.

(7) (a) As used in this Subsection (7):

(i) "Court" means the juvenile court.

(ii) "Division" means the Division of Juvenile Justice Services.

(b) Priority of obtaining DNA specimens by the court from minors under Section 53-10-403 whose cases are under the jurisdiction of the court but who are not in the legal custody of the division shall be:

(i) first, to obtain specimens from minors whose cases, as of July 1, 2002, are under the court's jurisdiction, before the court's jurisdiction over the minors' cases terminates; and

(ii) second, to obtain specimens from minors whose cases are under the jurisdiction of the court after July 1, 2002, within 120 days of the minor's case being found to be within the court's jurisdiction, if possible, but no later than before the court's jurisdiction over the minor's case terminates.

(c) Priority of obtaining DNA specimens by the division from minors under Section 53-10-403 who are committed to the legal custody of the division shall be:

(i) first, to obtain specimens from minors who as of July 1, 2002, are within the division's legal custody and who have not previously provided a DNA specimen under this section, before termination of the division's legal custody of these minors; and

(ii) second, to obtain specimens from minors who are placed in the legal custody of the division after July 1, 2002, within 120 days of the minor's being placed in the custody of the division, if possible, but no later than before the termination of the court's jurisdiction over the minor's case.

(8) (a) The Department of Corrections, the juvenile court, the Division of Juvenile Justice Services, and all law enforcement agencies in the state shall by policy establish procedures for obtaining saliva DNA specimens, and shall provide training for employees designated to collect saliva DNA specimens.

(b) (i) The department may designate correctional officers, including those employed by the adult probation and parole section of the department, to obtain the saliva DNA specimens required under this section.

(ii) The department shall ensure that the designated employees receive appropriate

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training and that the specimens are obtained in accordance with accepted protocol.

(c) Blood DNA specimens shall be obtained in accordance with Section 53-10-405.

Section 10. Section **63G-2-302** is amended to read:

### **63G-2-302. Private records.**

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if, prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll

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deductions;

(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(j) that part of a voter registration record identifying a voter's:

(i) driver license or identification card number;

(ii) social security number, or last four digits of the social security number;

(iii) email address;

(iv) date of birth; or

(v) phone number;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or 20A-2-204(4)(b);

(l) a voter registration record that is withheld under Subsection 20A-2-104(7);

(m) a withholding request form described in Subsections 20A-2-104(7) and (8) and any verification submitted in support of the form;

(n) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(o) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(3)(a);

(ii) Subsection 31A-23a-302(4); or

(iii) Subsection 31A-26-210(4);

(p) information obtained through a criminal background check under Title 11, Chapter



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40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(q) information provided by an offender that is:

(i) required by the registration requirements of [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4) [~~or 77-43-108(4)~~];

(r) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(s) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(t) an email address provided by a military or overseas voter under Section 20A-16-501;

(u) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

(v) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, except for:

(i) the commission's summary data report that is required in Section 63A-15-202; and

(ii) any other document that is classified as public in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission;

(w) a record described in Section 53G-9-604 that verifies that a parent was notified of an incident or threat;

(x) a criminal background check or credit history report conducted in accordance with Section 63A-3-201;

(y) a record described in Subsection 53-5a-104(7);

(z) on a record maintained by a county for the purpose of administering property taxes, an individual's:

(i) email address;

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- (ii) phone number; or
  - (iii) personal financial information related to a person's payment method;
  - (aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an exemption, deferral, abatement, or relief under:
    - (i) Title 59, Chapter 2, Part 11, Exemptions;
    - (ii) Title 59, Chapter 2, Part 12, Property Tax Relief;
    - (iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or
    - (iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;
  - (bb) a record provided by the State Tax Commission in response to a request under Subsection 59-1-403(4)(y)(iii);
  - (cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual child welfare case, as described in Subsection 36-33-103(3); and
  - (dd) a record relating to drug or alcohol testing of a state employee under Section 63A-17-1004.
- (2) The following records are private if properly classified by a governmental entity:
- (a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);
  - (b) records describing an individual's finances, except that the following are public:
    - (i) records described in Subsection 63G-2-301(2);
    - (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
    - (iii) records that must be disclosed in accordance with another statute;
  - (c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
  - (d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
  - (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if

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retained by it;

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 26B-6-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 11. Section **63G-7-301** is amended to read:

### **63G-7-301. Waivers of immunity.**

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

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(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Section 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Section 63G-7-302, as to any action brought under the authority of Utah†  
†  
Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) as to any claim for attorney fees or costs under Section 63G-2-209, 63G-2-405, or 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,

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crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement;

(i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment;

(j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:

(i) against a student of a public elementary or secondary school, including a charter school; and

(ii) by an employee of a public elementary or secondary school or charter school who:

(A) at the time of the sexual battery, held a position of special trust, as defined in Section 76-5-404.1, with respect to the student;

(B) is criminally charged in connection with the sexual battery; and

(C) the public elementary or secondary school or charter school knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to be a sex offender, kidnap offender, or child abuse offender as defined in Section 77-41-102, required to register under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, whose status as a sex offender, kidnap offender, or child abuse offender would have been revealed in a background check under Section 53G-11-402; and

(k) as to any action brought under Section 78B-6-2303.

(3) (a) As used in this Subsection (3):

(i) "Code of conduct" means a code of conduct that:

(A) is not less stringent than a model code of conduct, created by the State Board of Education, establishing a professional standard of care for preventing the conduct described in Subsection (3)(a)(i)(D);

(B) is adopted by the applicable local education governing body;

(C) regulates behavior of a school employee toward a student; and

(D) includes a prohibition against any sexual conduct between an employee and a student and against the employee and student sharing any sexually explicit or lewd

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communication, image, or photograph.

(ii) "Local education agency" means:

- (A) a school district;
- (B) a charter school; or
- (C) the Utah Schools for the Deaf and the Blind.

(iii) "Local education governing board" means:

- (A) for a school district, the local school board;
- (B) for a charter school, the charter school governing board; or
- (C) for the Utah Schools for the Deaf and the Blind, the state board.

(iv) "Public school" means a public elementary or secondary school.

(v) "Sexual abuse" means the offense described in Subsection 76-5-404.1(2).

(vi) "Sexual battery" means the offense described in Section 76-9-702.1, considering the term "child" in that section to include an individual under age 18.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim against a local education agency for an injury resulting from a sexual battery or sexual abuse committed against a student of a public school by a paid employee of the public school who is criminally charged in connection with the sexual battery or sexual abuse, unless:

(i) at the time of the sexual battery or sexual abuse, the public school was subject to a code of conduct; and

(ii) before the sexual battery or sexual abuse occurred, the public school had:

- (A) provided training on the code of conduct to the employee; and
- (B) required the employee to sign a statement acknowledging that the employee has

read and understands the code of conduct.

(4) (a) As used in this Subsection (4):

(i) "Higher education institution" means an institution included within the state system of higher education under Section 53B-1-102.

(ii) "Policy governing behavior" means a policy adopted by a higher education institution or the Utah Board of Higher Education that:

(A) establishes a professional standard of care for preventing the conduct described in Subsections (4)(a)(ii)(C) and (D);

(B) regulates behavior of a special trust employee toward a subordinate student;

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(C) includes a prohibition against any sexual conduct between a special trust employee and a subordinate student; and

(D) includes a prohibition against a special trust employee and subordinate student sharing any sexually explicit or lewd communication, image, or photograph.

(iii) "Sexual battery" means the offense described in Section 76-9-702.1.

(iv) "Special trust employee" means an employee of a higher education institution who is in a position of special trust, as defined in Section 76-5-404.1, with a higher education student.

(v) "Subordinate student" means a student:

(A) of a higher education institution; and

(B) whose educational opportunities could be adversely impacted by a special trust employee.

(b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a claim for an injury resulting from a sexual battery committed against a subordinate student by a special trust employee, unless:

(i) the institution proves that the special trust employee's behavior that otherwise would constitute a sexual battery was:

(A) with a subordinate student who was at least 18 years old at the time of the behavior; and

(B) with the student's consent; or

(ii) (A) at the time of the sexual battery, the higher education institution was subject to a policy governing behavior; and

(B) before the sexual battery occurred, the higher education institution had taken steps to implement and enforce the policy governing behavior.

Section 12. Section **63M-7-801** is amended to read:

### **63M-7-801. Definitions.**

As used in this part:

(1) "Board" means the Sex Offense Management Board created in Section 63M-7-802.

(2) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(3) "Registry" means the registry established in [~~Title 77, Chapter 41, Sex and Kidnap~~

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~~Offender Registry~~ Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry.

Section 13. Section **76-1-201** is amended to read:

### **76-1-201. Jurisdiction of offenses.**

(1) A person is subject to prosecution in this state for an offense which ~~[he]~~ the person commits, while either within or outside the state, by ~~[his]~~ the person's own conduct or that of another for which ~~[he]~~ the person is legally accountable, if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state;

(c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or

(d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is an element, occurs within this state.

(3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.

(a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

(b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the defendant proves by clear and convincing evidence that:

(i) the result of the homicide did not occur in this state; and

(ii) the defendant did not engage in any conduct in this state which is any element of the offense.

(4) (a) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

(b) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender, kidnap offender, or child abuse registration ~~[or Subsection 77-43-105(3) for child abuse offender registration]~~, the offense is considered to be committed:



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

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

(5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish jurisdiction.

(b) The defendant may challenge jurisdiction by filing a motion before trial stating which facts exist that deprive the state of jurisdiction.

(c) The burden is upon the state to initially establish jurisdiction over the offense by a preponderance of the evidence by showing under the provisions of Subsections (1) through (4) that the offense was committed either wholly or partly within the borders of the state.

(d) If after the prosecution has met its burden of proof under Subsection (5)(c) the defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the burden is upon the defendant to prove by a preponderance of the evidence:

(i) any facts claimed; and

(ii) why those facts deprive the state of jurisdiction.

(6) Facts that deprive the state of jurisdiction or prohibit the state from exercising jurisdiction include the fact that the:

(a) defendant is serving in a position that is entitled to diplomatic immunity from prosecution and that the defendant's country has not waived that diplomatic immunity;

(b) defendant is a member of the armed forces of another country and that the crime that he is alleged to have committed is one that due to an international agreement, such as a status of forces agreement between his country and the United States, cedes the exercise of jurisdiction over him for that offense to his country;

(c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101, and that the Indian tribe has a legal status with the United States or the state that vests jurisdiction in either tribal or federal courts for certain offenses committed within the exterior boundaries of a tribal reservation, and that the facts establish that the crime is one that vests jurisdiction in tribal or federal court; or

(d) offense occurred on land that is exclusively within federal jurisdiction.

(7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud Act, involves the use of personal identifying information which is uniquely personal to the

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consumer or business victim of that identity fraud and which information is considered to be in lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found.

(b) For purposes of Subsection (1)(a), an offense which is based on a violation of Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the location of the offender at the time of the offense, if the victim of the identity fraud resides or is found in this state.

(8) The judge shall determine jurisdiction.

Section 14. Section **76-1-202** is amended to read:

### **76-1-202. Venue of actions.**

(1) Criminal actions shall be tried in the county, district, or precinct where the offense is alleged to have been committed. In determining the proper place of trial, the following provisions shall apply:

(a) If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense is consummated.

(b) When conduct constituting elements of an offense or results that constitute elements, whether the conduct or result constituting elements is in itself unlawful, shall occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(c) If a person committing an offense upon the person of another is located in one county and his victim is located in another county at the time of the commission of the offense, trial may be held in either county.

(d) If a cause of death is inflicted in one county and death ensues in another county, the offender may be tried in either county.

(e) A person who commits an inchoate offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.

(f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another in the planning or commission of an offense in another county, he may be tried for the offense in either county.

(g) When an offense is committed within this state and it cannot be readily determined in which county or district the offense occurred, the following provisions shall be applicable:

(i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft

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passing within this state, the offender may be tried in any county through which such railroad car, vehicle, watercraft, or aircraft has passed.

(ii) When an offense is committed on any body of water bordering on or within this state, the offender may be tried in any county adjacent to such body of water. The words "body of water" shall include but not be limited to any stream, river, lake, or reservoir, whether natural or man-made.

(iii) A person who commits theft may be tried in any county in which he exerts control over the property affected.

(iv) If an offense is committed on or near the boundary of two or more counties, trial of the offense may be held in any of such counties.

(v) For any other offense, trial may be held in the county in which the defendant resides, or, if he has no fixed residence, in the county in which he is apprehended or to which he is extradited.

(h) A person who commits an offense based on Chapter 6, Part 11, Identity Fraud Act, may be tried in the county:

(i) where the victim's personal identifying information was obtained;

(ii) where the defendant used or attempted to use the personally identifying information;

(iii) where the victim of the identity fraud resides or is found; or

(iv) if multiple offenses of identity fraud occur in multiple jurisdictions, in any county where the victim's identity was used or obtained, or where the victim resides or is found.

(i) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender, kidnap offender, or child abuse offender registration [~~or Subsection 77-43-105(3) for child abuse offender registration~~], the offense is considered to be committed:

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

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

(2) All objections of improper place of trial are waived by a defendant unless made before trial.

Section 15. Section **76-3-402** is amended to read:

**76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

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(1) As used in this section:

(a) "Lower degree of offense" includes an offense for which:

(i) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and

(ii) the court removes the statutory enhancement in accordance with this section.

(b) "Minor regulatory offense" means the same as that term is defined in Section 77-40a-101.

(c) (i) "Rehabilitation program" means a program designed to reduce criminogenic and recidivism risks.

(ii) "Rehabilitation program" includes:

(A) a domestic violence treatment program, as that term is defined in Section 62A-2-101;

(B) a residential, vocational, and life skills program, as that term is defined in Section 13-53-102;

(C) a substance abuse treatment program, as that term is defined in Section 62A-2-101;

(D) a substance use disorder treatment program, as that term is defined in Section 62A-2-101;

(E) a youth program, as that term is defined in Section 62A-2-101;

(F) a program that meets the standards established by the Department of Corrections under Section 64-13-25;

(G) a drug court, a veterans court, or a mental health court certified by the Judicial Council; or

(H) a program that is substantially similar to a program described in Subsections (1)(c)(ii)(A) through (G).

(d) "Serious offense" means a felony or misdemeanor offense that is not a minor regulatory offense or a traffic offense.

(e) "Traffic offense" means the same as that term is defined in Section 77-40a-101.

(f) (i) Except as provided in Subsection (1)(f)(ii), "violent felony" means the same as that term is defined in Section 76-3-203.5.

(ii) "Violent felony" does not include an offense, or any attempt, solicitation, or conspiracy to commit an offense, for:

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(A) the possession, use, or removal of explosive, chemical, or incendiary devices under Subsection 76-10-306(3), (5), or (6); or

(B) the purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503.

(2) The court may enter a judgment of conviction for a lower degree of offense than established by statute and impose a sentence at the time of sentencing for the lower degree of offense if the court:

(a) takes into account:

(i) the nature and circumstances of the offense of which the defendant was found guilty; and

(ii) the history and character of the defendant;

(b) gives any victim present at the sentencing and the prosecuting attorney an opportunity to be heard; and

(c) concludes that the degree of offense established by statute would be unduly harsh to record as a conviction on the record for the defendant.

(3) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute:

(a) after the defendant is successfully discharged from probation or parole for the conviction; and

(b) if the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(4) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:

(a) the defendant's probation or parole for the conviction did not result in a successful discharge but the defendant is successfully discharged from probation or parole for a subsequent conviction of an offense;

(b) (i) at least five years have passed after the day on which the defendant is sentenced for the subsequent conviction; or

(ii) at least three years have passed after the day on which the defendant is sentenced for the subsequent conviction and the prosecuting attorney consents to the reduction;

(c) the defendant is not convicted of a serious offense during the time period described

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in Subsection (4)(b);

(d) there are no criminal proceedings pending against the defendant;

(e) the defendant is not on probation, on parole, or currently incarcerated for any other offense;

(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(5) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:

(a) the defendant's probation or parole for the conviction did not result in a successful discharge but the defendant is successfully discharged from a rehabilitation program;

(b) at least three years have passed after the day on which the defendant is successfully discharged from the rehabilitation program;

(c) the defendant is not convicted of a serious offense during the time period described in Subsection (5)(b);

(d) there are no criminal proceedings pending against the defendant;

(e) the defendant is not on probation, on parole, or currently incarcerated for any other offense;

(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(6) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:

(a) at least five years have passed after the day on which the defendant's probation or parole for the conviction did not result in a successful discharge;

(b) the defendant is not convicted of a serious offense during the time period described in Subsection (6)(a);

(c) there are no criminal proceedings pending against the defendant;

(d) the defendant is not on probation, on parole, or currently incarcerated for any other

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offense;

(e) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and

(f) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(7) In determining whether entering a judgment of a conviction for a lower degree of offense is in the interest of justice under Subsection (3), (4), (5), or (6):

(a) the court shall consider:

(i) the nature, circumstances, and severity of the offense for which a reduction is sought;

(ii) the physical, emotional, or other harm that the defendant caused any victim of the offense for which the reduction is sought; and

(iii) any input from a victim of the offense; and

(b) the court may consider:

(i) any special characteristics or circumstances of the defendant, including the defendant's criminogenic risks and needs;

(ii) the defendant's criminal history;

(iii) the defendant's employment and community service history;

(iv) whether the defendant participated in a rehabilitative program and successfully completed the program;

(v) any effect that a reduction would have on the defendant's ability to obtain or reapply for a professional license from the Department of Commerce;

(vi) whether the level of the offense has been reduced by law after the defendant's conviction;

(vii) any potential impact that the reduction would have on public safety; or

(viii) any other circumstances that are reasonably related to the defendant or the offense for which the reduction is sought.

(8) (a) A court may only enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) after:

(i) notice is provided to the other party;

(ii) reasonable efforts have been made by the prosecuting attorney to provide notice to

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any victims; and

(iii) a hearing is held if a hearing is requested by either party.

(b) A prosecuting attorney is entitled to a hearing on a motion seeking to reduce a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6).

(c) In a motion under Subsection (3), (4), (5), or (6) and at a requested hearing on the motion, the moving party has the burden to provide evidence sufficient to demonstrate that the requirements under Subsection (3), (4), (5), or (6) are met.

(9) A court has jurisdiction to consider and enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) regardless of whether the defendant is committed to jail as a condition of probation or is sentenced to prison.

(10) (a) An offense may be reduced only one degree under this section, unless the prosecuting attorney specifically agrees in writing or on the court record that the offense may be reduced two degrees.

(b) An offense may not be reduced under this section by more than two degrees.

(11) This section does not preclude an individual from obtaining or being granted an expungement of the individual's record in accordance with Title 77, Chapter 40a, Expungement.

(12) The court may not enter a judgment for a conviction for a lower degree of offense under this section if:

(a) the reduction is specifically precluded by law; or

(b) any unpaid balance remains on court-ordered restitution for the offense for which the reduction is sought.

(13) When the court enters a judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.

(14) (a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a sex offender, kidnap offender, or child abuse offender until the registration requirements under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, have expired.

(b) An individual required to register as a sex offender, kidnap offender, or child abuse offender for the individual's lifetime under Subsection 77-41-105(3)(c) may not be granted a



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reduction of the conviction for the offense or offenses that require the individual to register as a sex offender, kidnap offender, or child abuse offender.

~~[(15)(a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a child abuse offender until the registration requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.]~~

~~[(b) An individual required to register as a child abuse offender for the individual's lifetime under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the individual to register as a child abuse offender.]~~

Section 16. Section **76-5-401** is amended to read:

**76-5-401. Unlawful sexual activity with a minor -- Penalties -- Evidence of age raised by defendant -- Limitations.**

(1) (a) As used in this section, "minor" means an individual who is 14 years old or older, but younger than 16 years old, at the time the sexual activity described in Subsection (2) occurred.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an actor 18 years old or older commits unlawful sexual activity with a minor if the actor:

(i) has sexual intercourse with the minor;

(ii) engages in any sexual act with the minor involving the genitals of an individual and the mouth or anus of another individual; or

(iii) causes the penetration, however slight, of the genital or anal opening of the minor by a foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual.

(b) Any touching, however slight, is sufficient to constitute the relevant element of a violation of Subsection (2)(a)(ii).

(3) (a) A violation of Subsection (2) is a third degree felony.

(b) (i) Notwithstanding Subsection (3)(a) or (c), if the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, the offense is a class B misdemeanor.

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(ii) An offense under Subsection (3)(b)(i) is not subject to registration under Subsection [~~77-41-102(18)(a)(vii)~~] 77-41-102(19)(a)(vii).

(c) (i) Notwithstanding Subsection (3)(a), if the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant was younger than 21 years old at the time the sexual activity occurred, the offense is a class A misdemeanor.

(ii) An offense under Subsection (3)(c)(i) is not subject to registration under Subsection [~~77-41-102(18)(a)(vii)~~] 77-41-102(19)(a)(vii).

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

- (a) rape, in violation of Section 76-5-402;
- (b) object rape, in violation of Section 76-5-402.2;
- (c) forcible sodomy, in violation of Section 76-5-403;
- (d) aggravated sexual assault, in violation of Section 76-5-405; or
- (e) an attempt to commit an offense listed in Subsections (4)(a) through (4)(d).

Section 17. Section **76-5-401.1** is amended to read:

### **76-5-401.1. Sexual abuse of a minor -- Penalties -- Limitations.**

(1) (a) As used in this section:

(i) "Indecent liberties" means:

- (A) the actor touching another individual's genitals, anus, buttocks, pubic area, or female breast;
- (B) causing any part of an individual's body to touch the actor's or another's genitals, pubic area, anus, buttocks, or female breast;
- (C) simulating or pretending to engage in sexual intercourse with another individual, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse; or
- (D) causing an individual to simulate or pretend to engage in sexual intercourse with the actor or another, including genital-genital, oral-genital, anal-genital, or oral-anal intercourse.

(ii) "Minor" means an individual who is 14 years old or older, but younger than 16 years old, at the time the sexual activity described in Subsection (2) occurred.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits sexual abuse of a minor if the actor:

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- (i) is four years or more older than the minor; and
- (ii) with the intent to cause substantial emotional or bodily pain to any individual, or with the intent to arouse or gratify the sexual desire of any individual:
  - (A) touches the anus, buttocks, pubic area, or any part of the genitals of the minor;
  - (B) touches the breast of a female minor; or
  - (C) otherwise takes indecent liberties with the minor.
- (b) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(3) A violation of Subsection (2)(a) is:

(a) a class A misdemeanor; and

(b) not subject to registration under Subsection [~~77-41-102(18)(a)(viii)]~~

77-41-102(19)(a)(viii) on a first offense if the offender was younger than 21 years old at the time of the offense.

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

(a) unlawful sexual activity with a minor, in violation of Section 76-5-401;

(b) rape, in violation of Section 76-5-402;

(c) object rape, in violation of Section 76-5-402.2;

(d) forcible sodomy, in violation of Section 76-5-403;

(e) aggravated sexual assault, in violation of Section 76-5-405; or

(f) an attempt to commit an offense listed in Subsections (4)(a) through (e).

Section 18. Section **76-5-401.3** is amended to read:

### **76-5-401.3. Unlawful adolescent sexual activity -- Penalties -- Limitations.**

(1) (a) As used in this section, "adolescent" means an individual in the transitional phase of human physical and psychological growth and development between childhood and adulthood who is 12 years old or older, but younger than 18 years old.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits unlawful sexual activity if the actor:

(a) is an adolescent; and

(b) has sexual activity with another adolescent.

(3) A violation of Subsection (2) is a:

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(a) third degree felony if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old;

(b) third degree felony if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

(c) class A misdemeanor if an actor who is 16 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

(d) class A misdemeanor if an actor who is 14 or 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 years old;

(e) class B misdemeanor if an actor who is 17 years old engages in unlawful adolescent sexual activity with an adolescent who is 14 years old;

(f) class B misdemeanor if an actor who is 15 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old;

(g) class C misdemeanor if an actor who is 12 or 13 years old engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years old; and

(h) class C misdemeanor if an actor who is 14 years old engages in unlawful adolescent sexual activity with an adolescent who is 13 years old.

(4) The offenses referred to in Subsection (2) are:

(a) rape~~[, in violation of]~~ under Section 76-5-402;

(b) rape of a child~~[, in violation of]~~ under Section 76-5-402.1;

(c) object rape~~[, in violation of]~~ under Section 76-5-402.2;

(d) object rape of a child~~[, in violation of]~~ under Section 76-5-402.3;

(e) forcible sodomy~~[, in violation of]~~ under Section 76-5-403;

(f) sodomy on a child~~[, in violation of]~~ under Section 76-5-403.1;

(g) sexual abuse of a child~~[, in violation of]~~ under Section 76-5-404;

(h) aggravated sexual assault~~[, in violation of]~~ under Section 76-5-405;

(i) incest~~[, in violation of]~~ under Section 76-7-102; or

(j) an attempt to commit ~~[any]~~ an offense listed in Subsections (4)(a) through (4)(i).

(5) An offense under this section is not eligible for a nonjudicial adjustment under Section 80-6-303.5 or a referral to a youth court under Section 80-6-902.

(6) Except for an offense that is transferred to a district court by the juvenile court in accordance with Section 80-6-504, the district court may enter any sentence or combination of

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sentences that would have been available in juvenile court but for the delayed reporting or delayed filing of the information in the district court.

(7) An offense under this section is not subject to registration under Subsection [~~77-41-102(18)~~] 77-41-102(19).

Section 19. Section 76-9-702 is amended to read:

### 76-9-702. Lewdness.

(1) ~~{} A person~~ An actor is guilty of lewdness if the ~~{} person~~ actor under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, sexual abuse of a minor, unlawful sexual conduct with a 16- or 17-year-old, custodial sexual relations under Section 76-5-412, custodial sexual misconduct under Section 76-5-412.2, custodial sexual relations with youth receiving state services under Section 76-5-413, custodial sexual misconduct with youth receiving state services under Section 76-5-413.2, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the ~~{} person~~ actor should know will likely cause affront or alarm to, on, or in the presence of another individual who is 14 years old or older:

(a) an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;

(c) masturbates; or

(d) any other act of lewdness.

(2) (a) ~~{} A person~~ An actor convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) ~~{} A person~~ An actor convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

(i) the ~~{} person~~ actor is a sex offender as defined in Section 77-27-21.7;

(ii) the ~~{} person~~ actor has been previously convicted two or more times of violating Subsection (1); or

(iii) the ~~{} person~~ actor has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5.

(c) (i) For purposes of this Subsection (2) and Subsection [~~77-41-102(18)~~]

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77-41-102(19), a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

(ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Section 20. Section **76-9-702.1** is amended to read:

### **76-9-702.1. Sexual battery.**

(1) [~~A person~~] An actor is guilty of sexual battery if the [~~person~~] actor, under circumstances not amounting to an offense under Subsection (2), intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another [~~person~~] individual, or the breast of a female [~~person~~] individual, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the [~~person~~] individual touched.

(2) Offenses referred to in Subsection (1) are:

- (a) rape[;] under Section 76-5-402;
- (b) rape of a child[;] under Section 76-5-402.1;
- (c) object rape[;] under Section 76-5-402.2;
- (d) object rape of a child[;] under Section 76-5-402.3;
- (e) forcible sodomy[;] under Subsection 76-5-403(2);
- (f) sodomy on a child[;] under Section 76-5-403.1;
- (g) forcible sexual abuse[;] under Section 76-5-404;
- (h) sexual abuse of a child[;] under Section 76-5-404.1;
- (i) aggravated sexual abuse of a child[;] under Section 76-5-404.3;
- (j) aggravated sexual assault[;] under Section 76-5-405; and
- (k) an attempt to commit [~~any~~] an offense under this Subsection (2).

(3) Sexual battery is a class A misdemeanor.

(4) (a) For purposes of Subsection [~~77-41-102(18)~~] 77-41-102(19) only, a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

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(b) This Subsection (4) also applies if the charge under this section has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Section 21. Section **77-2-2.3** is amended to read:

### **77-2-2.3. Reducing the level of an offense.**

(1) Notwithstanding any other provision of law, a prosecuting attorney may:

(a) present and file an information charging an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute if the prosecuting attorney believes that the sentence would be disproportionate to the offense because there are special circumstances relating to the offense; or

(b) subject to the approval of the court, amend an information, as part of a plea agreement, to charge an individual for an offense under Subsections 76-3-103(1)(b) through (d), Subsection 76-3-103(2), or Section 76-3-104 with a classification of the offense at one degree lower than the classification that is provided in statute.

(2) A court may:

(a) enter a judgment of conviction for an offense filed under Subsection (1) at one degree lower than classified in statute; and

(b) impose a sentence for the offense filed under Subsection (1) at one degree lower than classified in statute.

(3) A conviction of an offense at one degree lower than classified in statute under Subsection (2) does not affect the requirements for registration of the offense under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry, or Title 77, Chapter 43, Child Abuse Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, if the elements of the offense for which the defendant is convicted are the same as the elements of an offense described in Section 77-41-102 [~~or 77-43-102~~].

(4) This section does not preclude an individual from obtaining and being granted an expungement for the individual's record in accordance with Title 77, Chapter 40a, Expungement.

Section 22. Section **77-11c-101** is amended to read:

### **77-11c-101. Definitions.**

As used in this chapter:

## **SB0023S01 compared with SB0023**

(1) "Acquitted" means the same as that term is defined in Section 77-11b-101.

(2) "Adjudicated" means that:

(a) (i) a judgment of conviction by plea or verdict of an offense has been entered by a court; and

(ii) a sentence has been imposed by the court; or

(b) a judgment has been entered for an adjudication of an offense by a juvenile court under Section 80-6-701.

(3) "Adjudication" means:

(a) a judgment of conviction by plea or verdict of an offense; or

(b) an adjudication for an offense by a juvenile court under Section 80-6-701.

(4) "Agency" means the same as that term is defined in Section 77-11a-101.

(5) "Appellate court" means the Utah Court of Appeals, the Utah Supreme Court, or the United States Supreme Court.

(6) (a) "Biological evidence" means an item that contains blood, semen, hair, saliva, epithelial cells, latent fingerprint evidence that may contain biological material suitable for DNA testing, or other identifiable human biological material that:

(i) is collected as part of an investigation or prosecution of a violent felony offense; and

(ii) may reasonably be used to incriminate or exculpate a person for the violent felony offense.

(b) "Biological evidence" includes:

(i) material that is catalogued separately, including:

(A) on a slide or swab; or

(B) inside a test tube, if the evidentiary sample that previously was inside the test tube has been consumed by testing;

(ii) material that is present on other evidence, including clothing, a ligature, bedding, a drinking cup, a cigarette, or a weapon, from which a DNA profile may be obtained;

(iii) the contents of a sexual assault examination kit; and

(iv) for a violent felony offense, material described in this Subsection (6) that is in the custody of an evidence collecting or retaining entity on May 4, 2022.

(7) "Claimant" means the same as that term is defined in Section 77-11a-101.



## SB0023S01 compared with SB0023

- (8) "Computer" means the same as that term is defined in Section 77-11a-101.
- (9) "Continuous chain of custody" means:
- (a) for a law enforcement agency or a court, that legal standards regarding a continuous chain of custody are maintained; and
  - (b) for an entity that is not a law enforcement agency or a court, that the entity maintains a record in accordance with legal standards required of the entity.
- (10) "Contraband" means the same as that term is defined in Section 77-11a-101.
- (11) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- (12) "Court" means a municipal, county, or state court.
- (13) "DNA" means deoxyribonucleic acid.
- (14) "DNA profile" means a unique identifier of an individual derived from DNA.
- (15) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.
- (16) "Evidence" means property, contraband, or an item or substance that:
- (a) is seized or collected as part of an investigation or prosecution of an offense; and
  - (b) may reasonably be used to incriminate or exculpate an individual for an offense.
- (17) (a) "Evidence collecting or retaining entity" means an entity within the state that collects, stores, or retrieves biological evidence.
- (b) "Evidence collecting or retaining entity" includes:
    - (i) a medical or forensic entity;
    - (ii) a law enforcement agency;
    - (iii) a court; and
    - (iv) an official, employee, or agent of an entity or agency described in this Subsection
- (17).
- (18) "Exhibit" means property, contraband, or an item or substance that is admitted into evidence for a court proceeding.
- (19) "In custody" means an individual who:
- (a) is incarcerated, civilly committed, on parole, or on probation; or
  - (b) is required to register under [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry.
- (20) "Law enforcement agency" means the same as that term is defined in Section 77-11a-101.

## SB0023S01 compared with SB0023

(21) "Medical or forensic entity" means a private or public hospital, medical facility, or other entity that secures biological evidence or conducts forensic examinations related to criminal investigations.

(22) "Physical evidence" includes evidence that:

(a) is related to:

(i) an investigation;

(ii) an arrest; or

(iii) a prosecution that resulted in a judgment of conviction; and

(b) is in the actual or constructive possession of a law enforcement agency or a court or an agent of a law enforcement agency or a court.

(23) "Property" means the same as that term is defined in Section 77-11a-101.

(24) "Prosecuting attorney" means the same as that term is defined in Section 77-11a-101.

(25) "Violent felony offense" means the same as the term "violent felony" is defined in Section 76-3-203.5.

(26) "Wildlife" means the same as that term is defined in Section 23A-1-101.

Section 23. Section **77-27-5.2** is amended to read:

**77-27-5.2. Board authority to order removal from Sex, Kidnap, and Child Abuse 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, and Child Abuse Offender Registry, the board shall issue an order directing the Department of [~~Corrections~~] Public Safety to remove the individual's name and personal information relating to the pardoned conviction from the Sex [~~and~~], Kidnap, and Child Abuse Offender Registry.

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

Section 24. Section **77-27-21.7** is amended to read:

**77-27-21.7. Sex offender restrictions.**

(1) As used in this section:

(a) "Condominium project" means the same as that term is defined in Section 57-8-3.

(b) "Minor" means an individual who is younger than 18 years old;

## SB0023S01 compared with SB0023

(c) (i) "Protected area" means the premises occupied by:

(A) a licensed day care or preschool facility;

(B) a public swimming pool or a swimming pool maintained, operated, or owned by a homeowners' association, condominium project, or apartment complex;

(C) a public or private primary or secondary school that is not on the grounds of a correctional facility;

(D) a community park that is open to the public or a park maintained, operated, or owned by a homeowners' association, condominium project, or apartment complex;

(E) a public playground or a playground maintained, operated, or owned by a homeowners' association, condominium project, or apartment complex, including those areas designed to provide minors with space, recreational equipment, or other amenities intended to allow minors to engage in physical activity; and

(F) except as provided in Subsection (1)(c)(ii), an area that is 1,000 feet or less from the residence of a victim of the sex offender if the sex offender is subject to a victim requested restriction.

(ii) "Protected area" does not include:

(A) the area described in Subsection (1)(c)(i)(F) if the victim is a member of the immediate family of the sex offender and the terms of the sex offender's agreement of probation or parole allow the sex offender to reside in the same residence as the victim;

(B) a park, playground, or swimming pool located on the property of a residential home;

(C) a park or swimming pool that prohibits minors at all times from using the park or swimming pool; or

(D) a park or swimming pool maintained, operated, or owned by a homeowners' association, condominium project, or apartment complex established for residents 55 years old or older if no minors are present at the park or swimming pool at the time the sex offender is present at the park or swimming pool.

(d) "Sex offender" means an adult or juvenile who is required to register in accordance with [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, due to a conviction for an offense that is committed against a person younger than 18 years old.

## SB0023S01 compared with SB0023

(2) For purposes of Subsection (1)(c)(i)(F), a sex offender is subject to a victim requested restriction if:

(a) the sex offender is on probation or parole for an offense that requires the offender to register in accordance with [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry;

(b) the victim or the victim's parent or guardian advises the Department of [~~Corrections~~] Public Safety that the victim elects to restrict the sex offender from the area and authorizes the Department of [~~Corrections~~] Public Safety to advise the sex offender of the area where the victim resides; and

(c) the Department of [~~Corrections~~] Public Safety notifies the sex offender in writing that the sex offender is prohibited from being in the area described in Subsection (1)(c)(i)(F) and provides a description of the location of the protected area to the sex offender.

(3) A sex offender may not:

(a) be in a protected area except:

(i) when the sex offender must be in a protected area to perform the sex offender's parental responsibilities;

(ii) (A) when the protected area is a public or private primary or secondary school; and

(B) the school is open and being used for a public activity other than a school-related function that involves a minor; or

(iii) (A) if the protected area is a licensed day care or preschool facility located within a building that is open to the public for purposes other than the operation of the day care or preschool facility; and

(B) the sex offender does not enter a part of the building that is occupied by the day care or preschool facility; or

(b) serve as an athletic coach, manager, or trainer for a sports team of which a minor who is younger than 18 years old is a member.

(4) A sex offender who violates this section is guilty of:

(a) a class A misdemeanor; or

(b) if previously convicted of violating this section within the last ten years, a third degree felony.

Section 25. Section ~~77-27-21.8~~ is amended to read:

## SB0023S01 compared with SB0023

### 77-27-21.8. Sex offender in presence of a child -- Definitions -- Penalties.

(1) As used in this section:

(a) "Accompany" means:

(i) to be in the presence of an individual; and

(ii) to move or travel with that individual from one location to another, whether outdoors, indoors, or in or on any type of vehicle.

(b) "Child" means an individual younger than 14 years of age.

(2) A sex offender subject to registration in accordance with [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, for an offense committed or attempted to be committed against a child younger than 14 years of age is guilty of a class A misdemeanor if the sex offender requests, invites, or solicits a child to accompany the sex offender, under circumstances that do not constitute an attempt to violate Section 76-5-301.1, child kidnapping, unless:

(a) (i) the sex offender, prior to accompanying the child:

(A) verbally advises the child's parent or legal guardian that the sex offender is on the state sex offender registry and is required by state law to obtain written permission in order for the sex offender to accompany the child; and

(B) requests that the child's parent or legal guardian provide written authorization for the sex offender to accompany the child, including the specific dates and locations;

(ii) the child's parent or legal guardian has provided to the sex offender written authorization, including the specific dates and locations, for the sex offender to accompany the child; and

(iii) the sex offender has possession of the written authorization and is accompanying the child only at the dates and locations specified in the authorization;

(b) the child's parent or guardian has verbally authorized the sex offender to accompany the child either in the child's residence or on property appurtenant to the child's residence, but in no other locations; or

(c) the child is the natural child of the sex offender, and the offender is not prohibited by any court order, or probation or parole provision, from contact with the child.

(3) (a) A sex offender convicted of a violation of Subsection (2) is subject to registration in accordance with [~~Title 77, Chapter 41, Sex and Kidnap Offender Registry~~] Title

## **SB0023S01 compared with SB0023**

77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, for an additional five years subsequent to the required registration under Section 77-41-105.

(b) The period of additional registration imposed under Subsection (3)(a) is also in addition to any period of registration imposed under Subsection 77-41-107(3) for failure to comply with registration requirements.

(4) It is not a defense to a prosecution under this section that the defendant mistakenly believed the individual to be 14 years of age or older at the time of the offense or was unaware of the individual's true age.

(5) This section does not apply if a sex offender is acting to rescue a child who is in an emergency and life-threatening situation.

Section 26. Section **77-38-605** is amended to read:

### **77-38-605. Administration -- Application.**

(1) The commission shall provide an application form to an applicant who seeks to participate in the program under this part.

(2) The commission may not charge an applicant or program participant for an application or participation fee to apply for, or participate in, the program.

(3) The application shall include:

(a) the applicant's name;

(b) a mailing address, a phone number, and an email address where the applicant may be contacted by the commission;

(c) an indication regarding whether the assailant is employed by a state or local government entity, and if applicable, the name of the state or local government entity;

(d) a statement that the applicant understands and consents to:

(i) remain enrolled in the program for four years, unless the applicant's participation in the program is cancelled under Section 77-38-617;

(ii) while the applicant is enrolled in the program, notify the commission when the applicant changes the applicant's actual address or legal name;

(iii) develop a safety plan with a program assistant;

(iv) authorize the commission to notify a state or local government entity that the applicant is a program participant;

(v) submit written notice to the commission if the applicant chooses to cancel the

## SB0023S01 compared with SB0023

applicant's participation in the program;

(vi) register to vote in person at the office of the clerk in the county where the applicant's actual address is located; and

(vii) certify that the commission is the applicant's designated agent for service of process for personal service;

(e) evidence that the applicant, or a minor or an incapacitated individual residing with the applicant, is a victim, including:

(i) a law enforcement, court, or other state, local, or federal government agency record;

or

(ii) a document from:

(A) a domestic violence program, facility, or shelter;

(B) a sexual assault program; or

(C) a religious, medical, or other professional from whom the applicant, or the minor or the incapacitated individual residing with the applicant, sought assistance in dealing with alleged abuse, domestic violence, stalking, or a sexual offense;

(f) a statement from the applicant that a disclosure of the applicant's actual address would endanger the applicant, or a minor or an incapacitated individual residing with the applicant;

(g) a statement by the applicant that the applicant:

(i) resides at a residential address that is not known by the assailant;

(ii) has relocated to a different residential address in the past 90 days that is not known by the assailant; or

(iii) will relocate to a different residential address in the state within 90 days that is not known by the assailant;

(h) the actual address that:

(i) the applicant requests that the commission not disclose; and

(ii) is at risk of discovery by the assailant or potential assailant;

(i) a statement by the applicant disclosing:

(i) the existence of a court order or action involving the applicant, or a minor or an incapacitated individual residing with the applicant, related to a divorce proceeding, a child support order or judgment, or the allocation of custody or parent-time; and

## SB0023S01 compared with SB0023

- (ii) the court that issued the order or has jurisdiction over the action;
- (j) the name of any other individual who resides with the applicant who needs to be a program participant to ensure the safety of the applicant, or a minor or an incapacitated individual residing with the applicant;
- (k) a statement by the applicant that:
  - (i) the applicant, or a minor or an incapacitated individual residing at the same address as the applicant, will benefit from participation in the program;
  - (ii) if the applicant intends to vote, the applicant will register to vote at the office of the clerk in the county in which the applicant actually resides; and
  - (iii) the applicant does not have a current obligation to register as a sex offender ~~[or a]~~, kidnap offender, or child abuse offender under ~~[Title 77, Chapter 41, Sex and Kidnap Offender Registry; and]~~ Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry; ~~}; [and]}~~
  - ~~[(iv) the applicant does not have a current obligation to register as a child abuse offender under Title 77, Chapter 43, Child Abuse Offender Registry;]~~
- (l) a statement by the applicant, under penalty of perjury, that the information contained in the application is true;
- (m) a statement that:
  - (i) if the applicant intends to use the assigned address for any correspondence with the State Tax Commission, the applicant must provide the State Tax Commission with the applicant's social security number, federal employee identification number, and any other identification number related to a tax, fee, charge, or license administered by the State Tax Commission; and
  - (ii) if the applicant intends to use the assigned address for correspondence to a state or local government entity for the purpose of titling or registering a motor vehicle or a watercraft that is owned or leased by the applicant, the applicant shall provide to the state or local government entity for each motor vehicle or watercraft:
    - (A) the motor vehicle or hull identification number;
    - (B) the license plate or registration number for the motor vehicle or the watercraft; and
    - (C) the physical address where each motor vehicle or watercraft is stored; and
- (n) a statement that any assistance or counseling provided by a program assistant as part of the program does not constitute legal advice or legal services to the applicant.



## SB0023S01 compared with SB0023

Section 27. Section 77-40a-303 is amended to read:

**77-40a-303. Requirements for a certificate of eligibility to expunge records of a conviction.**

(1) Except as otherwise provided by this section, a petitioner is eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction if:

(a) the petitioner has paid in full all fines and interest ordered by the court related to the conviction for which expungement is sought;

(b) the petitioner has paid in full all restitution ordered by the court under Section 77-38b-205; and

(c) the following time periods have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for the conviction that the petitioner seeks to expunge:

(i) 10 years for the conviction of a misdemeanor under Subsection 41-6a-501(2);

(ii) 10 years for the conviction of a felony for operating a motor vehicle with any amount of a controlled substance in an individual's body and causing serious bodily injury or death, as codified before May 4, 2022, Laws of Utah 2021, ~~§~~

Chapter 236, Section 1, Subsection 58-37-8(2)(g);

(iii) seven years for the conviction of a felony;

(iv) five years for the conviction of a drug possession offense that is a felony;

(v) five years for the conviction of a class A misdemeanor;

(vi) four years for the conviction of a class B misdemeanor; or

(vii) three years for the conviction of a class C misdemeanor or infraction.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction under Subsection (1) if:

(a) except as provided in Subsection (3), the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a felony conviction of a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) a felony conviction described in Subsection 41-6a-501(2);

## **SB0023S01 compared with SB0023**

(v) an offense, or a combination of offenses, that would require the individual to register as a sex offender, as defined in Section 77-41-102; or

(vi) a registerable child abuse offense as defined in Subsection [~~77-43-102(2)~~]  
77-41-102(1);

(b) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;

(c) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;

(d) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense;

(e) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility;

(f) there is a criminal protective order or a criminal stalking injunction in effect for the case; or

(g) the bureau determines that the petitioner's criminal history makes the petitioner ineligible for a certificate of eligibility under Subsection (4) or (5).

(3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as defined in Section 76-3-209, if, at the time of the offense, a petitioner who committed the offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District Court.

(4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

## **SB0023S01 compared with SB0023**

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

(5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non-drug possession offense arising from the same criminal episode, the bureau shall count that criminal episode as a conviction under Subsection (4) if any non-drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (1)(c) than any drug possession offense in that episode.

(7) Except as provided in Subsection (8), if at least 10 years have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions:

(a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased by one; and

(b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if the highest level of convicted offense in the criminal episode is:

(i) a class B misdemeanor;

(ii) a class C misdemeanor;

(iii) a drug possession offense if none of the non-drug possession offenses in the criminal episode are a felony or a class A misdemeanor; or

## SB0023S01 compared with SB0023

(iv) an infraction.

(8) When determining whether a petitioner is eligible for a certificate of eligibility under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or prior conviction for:

(a) an infraction;

(b) a traffic offense;

(c) a minor regulatory offense; or

(d) a clean slate eligible case that was automatically expunged in accordance with Section 77-40a-201.

(9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes in accordance with Section 77-27-5.1.

Section 28. Section **77-40a-403** is amended to read:

### **77-40a-403. Retention and release of expunged records -- Agencies.**

(1) (a) The bureau, after receiving an expungement order, shall keep, index, and maintain all expunged records of arrests and convictions.

(b) Any agency, other than the bureau, receiving an expungement order shall develop and implement a process to identify and maintain an expunged record.

(2) (a) An agency shall provide an individual who receives an expungement with written confirmation that the agency has expunged all records of the offense for which the individual received the expungement if the individual requests confirmation from the agency.

(b) The bureau may charge a fee for providing a written confirmation under Subsection (2)(a) in accordance with the process in Section 63J-1-504.

(3) (a) An employee of the bureau, or any agency with an expunged record, may not divulge any information contained in the expunged record to any person or agency without a court order unless:

(i) specifically authorized by statute; or

(ii) subject to Subsection (3)(b), the information in an expunged record is being shared with another agency through a records management system that both agencies use for the purpose of record management.

(b) An agency with a records management system may not disclose any information in

## **SB0023S01 compared with SB0023**

an expunged record with another agency or person that does not use the records management system for the purpose of record management.

(4) The following entities or agencies may receive information contained in expunged records upon specific request:

- (a) the Board of Pardons and Parole;
- (b) Peace Officer Standards and Training;
- (c) federal authorities if required by federal law;
- (d) the State Board of Education;
- (e) the Commission on Criminal and Juvenile Justice, for purposes of investigating

applicants for judicial office; and

(f) a research institution or an agency engaged in research regarding the criminal justice system if:

(i) the research institution or agency provides a legitimate research purpose for gathering information from the expunged records;

(ii) the research institution or agency enters into a data sharing agreement with the court or agency with custody of the expunged records that protects the confidentiality of any identifying information in the expunged records;

(iii) any research using expunged records does not include any individual's name or identifying information in any product of that research; and

(iv) any product resulting from research using expunged records includes a disclosure that expunged records were used for research purposes.

(5) Except as otherwise provided by this section or by court order, a person, an agency, or an entity authorized by this section to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the specific request, including distribution on a public website.

(6) A prosecuting attorney may communicate with another prosecuting attorney, or another prosecutorial agency, regarding information in an expunged record that includes a conviction, or a charge dismissed as a result of a successful completion of a plea in abeyance agreement, for:

- (a) stalking as described in Section 76-5-106.5;
- (b) a domestic violence offense as defined in Section 77-36-1;

## SB0023S01 compared with SB0023

(c) an offense that would require the individual to register as a sex offender, kidnap offender, or child abuse offender as defined in Section 77-41-102; or

(d) a weapons offense under Title 76, Chapter 10, Part 5, Weapons.

(7) Except as provided in Subsection (9), a prosecuting attorney may not use an expunged record for the purpose of a sentencing enhancement or as a basis for charging an individual with an offense that requires a prior conviction.

(8) The bureau may also use the information in the bureau's index as provided in Section 53-5-704.

(9) If, after obtaining an expungement, an individual is charged with a felony or an offense eligible for enhancement based on a prior conviction, the state may petition the court to open the expunged records upon a showing of good cause.

(10) (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.

(b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

(c) At the end of the action or proceeding, the court shall order the records expunged again.

(d) Any person authorized by this Subsection (10) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.

(11) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records, and Subsection 53-10-108(2)(k) for records held by the bureau.

Section 29. Section 77-41-102 (Effective 07/01/24) is amended to read:

### **CHAPTER 41. SEX, KIDNAP, AND CHILD ABUSE OFFENDER REGISTRY**

#### **77-41-102 (Effective 07/01/24). Definitions.**

As used in this chapter:

(1) "Child abuse offender" means an individual:

(a) who has been convicted in this state of a violation of:

(i) aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b); or

## **SB0023S01 compared with SB0023**

(ii) attempting, soliciting, or conspiring to commit aggravated child abuse under Subsection 76-5-109.2(3)(a) or (b);

(b) (i) who has been convicted of a crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including a state, federal, or military court, that is substantially equivalent to the offense listed in Subsection (1)(a); and

(ii) (A) who is a Utah resident; or

(B) who is not a Utah resident but is in this state for a total of 10 days in a 12-month period, regardless of whether the offender intends to permanently reside in this state;

(c) (i) (A) who is required to register as a child abuse offender in another jurisdiction of original conviction;

(B) who is required to register as a child abuse offender by a state, a federal, or a military court; or

(C) who would be required to register as a child abuse offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or a previous registration requirement; and

(ii) who is in this state for a total of 10 days in a 12-month period, regardless of whether the offender intends to permanently reside in this state;

(d) (i) (A) who is a nonresident regularly employed or working in this state; or

(B) who is a student in this state; and

(ii) (A) who was convicted of the offense listed in Subsection (1)(a) or a substantially equivalent offense in another jurisdiction; or

(B) who is required to register in the individual's state of residence based on a conviction for an offense that is not substantially equivalent to an offense listed in Subsection (1)(a);

(e) who is found not guilty by reason of insanity in this state or in another jurisdiction of the offense listed in Subsection (1)(a); or

(f) (i) who is adjudicated under Section 80-6-701 for the offense listed in Subsection (1)(a); and

(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense if:

(A) the individual remains in the division's custody until 30 days before the individual's

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21st birthday;

(B) the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605 and the individual remains in the division's custody until 30 days before the individual's 25th birthday; or

(C) the individual is moved from the division's custody to the custody of the department before expiration of the division's jurisdiction over the individual.

(2) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.

~~(2)~~ (3) "Business day" means a day on which state offices are open for regular business.

~~(3)~~ (4) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.

~~(4)~~ (5) (a) "Convicted" means a plea or conviction of:

(i) guilty;

(ii) guilty with a mental illness; or

(iii) no contest.

(b) "Convicted" includes, unless otherwise specified, the period a plea is held in abeyance pursuant to a plea in abeyance agreement as defined in Section 77-2a-1.

(c) "Convicted" does not include:

(i) a withdrawn or dismissed plea in abeyance;

(ii) a diversion agreement; or

(iii) an adjudication of a minor for an offense under Section 80-6-701.

~~(5)~~ (6) "Department" means the Department of Public Safety.

~~(6)~~ (7) "Division" means the Division of Juvenile Justice Services.

~~(7)~~ (8) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

~~(8)~~ (9) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;



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(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

~~[(9)]~~ (10) "Jurisdiction" means any state, Indian Country, United States Territory, or ~~[any]~~ property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.

~~[(10)]~~ (11) "Kidnap offender" means ~~[any]~~ an individual, other than a natural parent of the victim:

(a) who has been convicted in this state of a violation of:

(i) ~~[Subsection 76-5-301(2)(c) or (d);]~~ kidnapping under Subsection 76-5-301(2)(c) or (d);

(ii) ~~[Section 76-5-301.1;]~~ child kidnapping under Section 76-5-301.1;

(iii) ~~[Section 76-5-302;]~~ aggravated kidnapping under Section 76-5-302;

(iv) ~~[Section 76-5-308;]~~ human trafficking for labor under Section 76-5-308;

(v) ~~[Section 76-5-308.3;]~~ human smuggling under Section 76-5-308.3;

~~[(vi) Section 76-5-308, human smuggling, when the individual smuggled is under 18 years old;]~~

~~[(vii)]~~ (vi) ~~[Section 76-5-308.5;]~~ human trafficking of a child for labor under Subsection 76-5-308.5(4)(a);

~~[(viii)]~~ (vii) ~~[Section 76-5-310;]~~ aggravated human trafficking under Section 76-5-310;

~~[(ix)]~~ (viii) ~~[Section 76-5-310.1;]~~ aggravated human smuggling under Section 76-5-310.1;

~~[(x)]~~ (ix) ~~[Section 76-5-311;]~~ human trafficking of a vulnerable adult for labor under Section 76-5-311; or

~~[(xi)]~~ (x) attempting, soliciting, or conspiring to commit ~~[any]~~ a felony offense listed in Subsections ~~[(10)(a)(i)]~~ (11)(a)(i) through ~~[(x);]~~ (ix);

(b) (i) who has been convicted of ~~[any]~~ a crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including ~~[any]~~ a state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection ~~[(10)(a)]~~

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(11)(a); and

(ii) (A) who is ~~[(A)]~~ a Utah resident; or

(B) ~~who is~~ not a Utah resident ~~[, but who, in any 12-month period,]~~ but is in this state for a total of 10 ~~[or more]~~ days in a 12-month period, regardless of whether ~~[or not]~~ the offender intends to permanently reside in this state;

(c) (i) (A) who is required to register as a kidnap offender in ~~[any other]~~ another jurisdiction of original conviction;

(B) who is required to register as a kidnap offender by ~~[any]~~ a state, federal, or military court; or

(C) who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or ~~[any]~~ a previous registration ~~[requirements]~~ requirement; and

(ii) ~~[in any 12-month period,]~~ who is in this state for a total of 10 ~~[or more]~~ days in a 12-month period, regardless of whether ~~[or not]~~ the offender intends to permanently reside in this state;

(d) (i) (A) who is a nonresident regularly employed or working in this state; or

(B) who is a student in this state; and

(ii) (A) who was convicted of one or more offenses listed in Subsection ~~[(10);]~~ (11)(a) or any substantially equivalent offense in another jurisdiction; or

(B) ~~[as a result of the conviction,]~~ who is required to register in the individual's state of residence based on a conviction for an offense that is not substantially equivalent to an offense listed in Subsection (11)(a);

(e) who is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection ~~[(10)]~~ (11)(a); or

(f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection ~~[(10)(a)]~~ (11)(a); and

(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense if:

(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday;

(B) the juvenile court extended the juvenile court's jurisdiction over the individual

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under Section 80-6-605 and the individual remains in the division's custody until 30 days before the individual's 25th birthday; or

(C) the individual is moved from the division's custody to the custody of the department before expiration of the division's jurisdiction over the individual.

~~[(11)]~~ (12) "Natural parent" means a minor's biological or adoptive parent, ~~[and includes]~~ including the minor's noncustodial parent.

~~[(12)]~~ (13) "Offender" means a ~~[kidnap offender as defined in Subsection (10) or a sex offender as defined in Subsection (18)]~~ child abuse offender, kidnap offender, or sex offender.

~~[(13)]~~ (14) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(b) does not include date of birth, social security number, PIN number, or Internet passwords.

~~[(14)]~~ (15) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at ~~[any]~~ a future date.

~~[(15)]~~ (16) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

~~[(16)]~~ (17) "Registration website" means the Sex ~~[and]~~, Kidnap, and Child Abuse Offender Notification and Registration website described in Section 77-41-110 and the information on the website.

~~[(17)]~~ (18) "Secondary residence" means ~~[any]~~ real property that the offender owns or has a financial interest in, or ~~[any]~~ a location where ~~[, in any 12-month period,]~~ the offender stays overnight a total of 10 or more nights in a 12-month period when not staying at the offender's primary residence.

~~[(18)]~~ (19) "Sex offender" means ~~[any]~~ an individual:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of ~~[Section 76-4-401,]~~ enticing a minor under Section 76-4-401;

(ii) ~~[Section 76-5b-202,]~~ sexual exploitation of a vulnerable adult under Section 76-5b-202;

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- (iii) [~~Section 76-5-308.1;~~] human trafficking for sexual exploitation under Section 76-5-308.1;
- (iv) [~~Section 76-5-308.5;~~] human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b);
- (v) [~~Section 76-5-310;~~] aggravated human trafficking for sexual exploitation under Section 76-5-310;
- (vi) [~~Section 76-5-311;~~] human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311;
- (vii) [~~Section 76-5-401;~~] unlawful sexual activity with a minor under Section 76-5-401, except as provided in Subsection 76-5-401(3)(b) or (c);
- (viii) [~~Section 76-5-401.1;~~] sexual abuse of a minor under Section 76-5-401.1, except as provided in Subsection 76-5-401.1(3);
- (ix) [~~Section 76-5-401.2;~~] unlawful sexual conduct with a 16 or 17 year old under Section 76-5-401.2;
- (x) [~~Section 76-5-402;~~] rape under Section 76-5-402;
- (xi) [~~Section 76-5-402.1;~~] rape of a child under Section 76-5-402.1;
- (xii) [~~Section 76-5-402.2;~~] object rape under Section 76-5-402.2;
- (xiii) [~~Section 76-5-402.3;~~] object rape of a child under Section 76-5-402.3;
- (xiv) a felony violation of [~~Section 76-5-403;~~] forcible sodomy under Section 76-5-403;
- (xv) [~~Section 76-5-403.1;~~] sodomy on a child under Section 76-5-403.1;
- (xvi) [~~Section 76-5-404;~~] forcible sexual abuse under Section 76-5-404;
- (xvii) [~~Section 76-5-404.1;~~] sexual abuse of a child[;] under Section 76-5-404.1;
- (xviii) ~~†~~[~~or Section 76-5-404.3;~~] aggravated sexual abuse of a child under Section 76-5-404.3;
- ~~(xviii)~~ (xix) [~~Section 76-5-405;~~] aggravated sexual assault under Section 76-5-405;
- ~~(xix)~~ (xx) [~~Section 76-5-412;~~] custodial sexual relations under Section 76-5-412, when the individual in custody is younger than 18 years old, if the offense is committed on or after May 10, 2011;
- ~~(xx)~~ (xxi) [~~Section 76-5b-201;~~] sexual exploitation of a minor under Section 76-5b-201;

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~~[(xxi)]~~ ~~(xxii)~~ [~~Section 76-5b-201.1,~~] aggravated sexual exploitation of a minor under Section 76-5b-201.1;

~~[(xxii)]~~ ~~(xxiii)~~ [~~Section 76-5b-204,~~] sexual extortion or aggravated sexual extortion Section 76-5b-204;

~~[(xxiii)]~~ ~~(xxiv)~~ [~~Section 76-7-102,~~] incest under Section 76-7-102;

~~[(xxiv)]~~ ~~(xxv)~~ [~~Section 76-9-702,~~] lewdness under Section 76-9-702, if the individual has been convicted of the offense four or more times;

~~[(xxv)]~~ ~~(xxvi)~~ [~~Section 76-9-702.1,~~] sexual battery under Section 76-9-702.1, if the individual has been convicted of the offense four or more times;

~~[(xxvi)]~~ ~~(xxvii)~~ any combination of convictions of [~~Section 76-9-702,~~] lewdness under Section 76-9-702, and of [~~Section 76-9-702.1,~~] sexual battery under Section 76-9-702.1, that total four or more convictions;

~~[(xxvii)]~~ ~~(xxviii)~~ [~~Section 76-9-702.5,~~] lewdness involving a child under Section 76-9-702.5;

~~[(xxviii)]~~ ~~(xxix)~~ a felony or class A misdemeanor violation of [~~Section 76-9-702.7,~~] voyeurism under Section 76-9-702.7;

~~[(xxix)]~~ ~~(xxx)~~ [~~Section 76-10-1306,~~] aggravated exploitation of prostitution under Section 76-10-1306; or

~~[(xxx)]~~ ~~(xxxi)~~ attempting, soliciting, or conspiring to commit [~~any~~] a felony offense listed in this Subsection [~~(18)(a)~~] (19)(a);

(b) (i) who has been convicted of [~~any~~] a crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including [~~any~~] a state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection [~~(18)(a)~~] (19)(a); and

(ii) (A) who is [~~:(A)~~] a Utah resident; or

(B) who is not a Utah resident [~~, but who, in any 12-month period,~~] but is in this state for a total of 10 [~~or more~~] days in a 12-month period, regardless of whether the offender intends to permanently reside in this state;

(c) (i) (A) who is required to register as a sex offender in [~~any other~~] another jurisdiction of original conviction;

(B) who is required to register as a sex offender by [~~any~~] a state, federal, or military

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court; or

(C) who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or ~~[any]~~ a previous registration ~~[requirements]~~ requirement; and

(ii) who ~~[, in any 12-month period,]~~ is in ~~[the]~~ this state for a total of 10 ~~[or more]~~ days in a 12-month period, regardless of whether ~~[or not]~~ the offender intends to permanently reside in this state;

(d) (i) (A) who is a nonresident regularly employed or working in this state; or

(B) who is a student in this state; and

(ii) (A) who was convicted of one or more offenses listed in Subsection ~~[(18)(a), or any]~~ (19)(a) or a substantially equivalent offense in ~~[any]~~ another jurisdiction; or

(B) who is ~~[, as a result of the conviction,]~~ required to register in the individual's jurisdiction of residence based on a conviction for an offense that is not substantially equivalent to an offense listed in Subsection (19)(a);

(e) who is found not guilty by reason of insanity in this state, or in ~~[any other]~~ another jurisdiction of one or more offenses listed in Subsection ~~[(18)(a)]~~ (19)(a); or

(f) (i) who is adjudicated under Section 80-6-701 for one or more offenses listed in Subsection ~~[(18)(a)]~~ (19)(a); and

(ii) who has been committed to the division for secure care, as defined in Section 80-1-102, for that offense if:

(A) the individual remains in the division's custody until 30 days before the individual's 21st birthday;

(B) the juvenile court extended the juvenile court's jurisdiction over the individual under Section 80-6-605 and the individual remains in the division's custody until 30 days before the individual's 25th birthday; or

(C) the individual is moved from the division's custody to the custody of the department before expiration of the division's jurisdiction over the individual.

~~[(19)]~~ (20) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

~~[(20)]~~ (21) "Vehicle" means ~~[any]~~ a motor vehicle, an aircraft, or a watercraft subject to registration in any jurisdiction.

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Section 30. Section 77-41-103 (Effective 07/01/24) is amended to read:

### 77-41-103 (Effective 07/01/24). Department duties.

(1) The department shall:

- (a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders and sex ~~and~~ and kidnap, and child abuse offenses;
- (b) make information listed in Subsection 77-41-110(4) available to the public; and
- (c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-41-110(4), but only:
  - (i) for the purposes under this chapter; or
  - (ii) in accordance with Section 63G-2-206.

(2) ~~Any~~ A law enforcement agency shall, in the manner prescribed by the department, inform the department of:

- (a) the receipt of a report or complaint of an offense listed in Subsection ~~[77-41-102(10) or (18)]~~ 77-41-102(1), (11), or (19), within three business days; and
- (b) the arrest of ~~[a person]~~ an individual suspected of ~~[any of the offenses]~~ an offense listed in Subsection ~~[77-41-102(10) or (18)]~~ 77-41-102(1), (11), or (19), within five business days.

(3) Upon convicting ~~[a person of any of the offenses]~~ an individual of an offense listed in Subsection ~~[77-41-102(10) or (18)]~~ 77-41-102(1), (11), or (19), the [convicting] sentencing court shall within three business days forward a signed copy of the judgment and sentence to the Sex ~~[and]~~, Kidnap, and Child Abuse Offender Registry office within the department.

(4) Upon modifying, withdrawing, setting aside, vacating, or otherwise altering a conviction for ~~[any]~~ an offense listed in Subsection ~~[77-41-102(10) or (18)]~~ 77-41-102(1), (11), or (19), the court shall, within three business days, forward a signed copy of the order to the Sex ~~[and]~~, Kidnap, and Child Abuse Offender Registry office within the department.

(5) (a) [The] Subject to Subsection (5)(b), the department may intervene in any matter, including a criminal action, where the matter purports to affect ~~[a person's] [an individual's]~~ an individual's registration requirements under this chapter.

(b) The department may only file a motion to intervene under Subsection (5)(a) within 60 days after the day on which:

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(i) the sentencing court enters a judgment or sentence against an individual for an offense listed in Subsection 77-41-102(1), (11), or (19), if the details of the written plea agreement, judgment, or sentence indicate that the individual's registration requirements under this chapter could be affected; or

(ii) a court modifies, withdraws, sets aside, vacates, or otherwise alters an individual's conviction for an offense listed in Subsection 77-41-102(1), (11), or (19), affecting the individual's registration requirement under this chapter and the written plea agreement, judgment, or sentence entered at the time the individual was sentenced did not indicate that the individual's registration requirement could be affected.

(6) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for;

(ii) a description of the offender's primary and secondary targets; and

(iii) ~~any~~ other relevant identifying information as determined by the department;

(b) maintain the ~~[Sex Offender and Kidnap Offender]~~ Sex, Kidnap, and Child Abuse Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:

(i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or

(B) promptly made available to the district superintendent of the school district where the offender is employed if the educational institution is an institution of primary education; and

(ii) entered into the appropriate state records or data system.

Section 31. Section ~~77-41-105~~ is amended to read:

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

(1) (a) An offender who enters this state from another jurisdiction is required to register under Subsection (3) and Subsection ~~[77-41-102(10) or (18)]~~ 77-41-102(1), (11), or (19).

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



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(2) (a) An offender required to register under Subsection [~~77-41-102(10) or (18)~~] 77-41-102(1), (11), or (19) who is under supervision by the department shall register in person with the Division of Adult Probation and Parole.

(b) An offender required to register under Subsection [~~77-41-102(10) or (18)~~] 77-41-102(1), (11), or (19) who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

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

(b) Except as provided in Subsections (3)(c)(iii), (4), and (5), an offender who is convicted in another jurisdiction of an offense listed in Subsection [~~77-41-102(10)(a) or (18)(a)~~] 77-41-102(1), (11), or (19), a substantially similar offense, another offense that requires registration in the jurisdiction of conviction, or an offender who is ordered by a court of another jurisdiction to register as an offender shall

register for the time period required by the jurisdiction where the offender was convicted or ordered to register.

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

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

(iii) (A) If the sentencing court at any time after conviction determines that the offense

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does not involve force or coercion, lifetime registration under Subsection (3)(c)(i) does not apply to an offender who commits the offense when the offender is under 21 years old.

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

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

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

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

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

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

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

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

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

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

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

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

(d) the make, model, color, year, plate number, and vehicle identification number of a vehicle or vehicles the offender owns or drives more than 12 times per year;

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- (e) a current photograph of the offender;
  - (f) a set of fingerprints, if one has not already been provided;
  - (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;
  - (h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;
  - (i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;
  - (j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;
  - (k) a copy of the offender's passport, if a passport has been issued to the offender;
  - (l) if the offender is an alien, all documents establishing the offender's immigration status;
  - (m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;
  - (n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and a change of enrollment or employment status of the offender at an educational institution;
  - (o) the name, the telephone number, and the address of a place where the offender is employed or will be employed;
  - (p) the name, the telephone number, and the address of a place where the offender works as a volunteer or will work as a volunteer; and
  - (q) the offender's social security number.
- (8) (a) An offender may change the offender's name in accordance with Title 42, Chapter 1, Change of Name, if the name change is not contrary to the interests of the public.
- (b) Notwithstanding Section 42-1-2, an offender shall provide notice to the department at least 30 days before the day on which the hearing for the name change is held.
- (c) The court shall provide a copy of the order granting the offender's name change to the department within 10 days after the day on which the court issues the order.
- (d) If the court orders an offender's name changed, the department shall publish on the registration website the offender's former name, and the offender's changed name as an alias.

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

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

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

Section 32. Section **77-41-106** is amended to read:

### **77-41-106. Offenses requiring lifetime registration.**

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

(1) [~~any~~] an offense listed in Subsection [~~77-41-102(10) or (18)~~] 77-41-102(1), (11), or (19) if, at the time of the conviction for the offense, the offender has previously been convicted of an offense listed in Subsection [~~77-41-102(10) or (18)~~] 77-41-102(1), (11), or (19) or has previously been required to register as a sex offender, kidnap offender, or child abuse offender for an offense committed as a juvenile;

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

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

(b) [~~Section 76-5-402;~~] rape under Section 76-5-402;

(c) [~~Section 76-5-402.1;~~] rape of a child under Section 76-5-402.1;

(d) [~~Section 76-5-402.2;~~] object rape under Section 76-5-402.2;

(e) [~~Section 76-5-402.3;~~] object rape of a child under Section 76-5-402.3;

(f) [~~Section 76-5-403.1;~~] sodomy on a child under Section 76-5-403.1;

(g) [~~Section 76-5-404.3;~~] aggravated sexual abuse of a child under Section 76-5-404.3;

or

(h) [~~Section 76-5-405;~~] aggravated sexual assault under Section 76-5-405;

(3) [~~Section 76-5-308.1;~~] human trafficking for sexual exploitation under Section 76-5-308.1;

(4) [~~Section 76-5-308.5;~~] human trafficking of a child for sexual exploitation under Subsection 76-5-308.5(4)(b);

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(5) [~~Section 76-5-310;~~] aggravated human trafficking for sexual exploitation under Section 76-5-310;

(6) [~~Section 76-5-311;~~] human trafficking of a vulnerable adult for sexual exploitation under Section 76-5-311;

[~~(7) Section 76-4-401, a felony violation of enticing a minor;~~]

[~~(8)~~] (7) [~~Section 76-5-302;~~] aggravated kidnapping under Section 76-5-302, except if the offender is a natural parent of the victim;

[~~(9)~~] (8) [~~Section 76-5-403;~~] forcible sodomy under Section 76-5-403;

[~~(10)~~] (9) [~~Section 76-5-404.1;~~] sexual abuse of a child under Section 76-5-404.1;

[~~(11)~~] (10) [~~Section 76-5b-201;~~] sexual exploitation of a minor under Section 76-5b-201;

[~~(12)~~] (11) [~~Section 76-5b-201.1;~~] aggravated sexual exploitation of a minor under Section 76-5b-201.1;

[~~(13)~~] (12) [~~Subsection 76-5b-204(2)(b);~~] aggravated sexual extortion under Subsection 76-5b-204(2)(b); or

[~~(14)~~] (13) [~~Section 76-10-1306;~~] aggravated exploitation of prostitution under Section 76-10-1306, on or after May 10, 2011; or

(14) a felony violation of enticing a minor under Section 76-4-401 if the offender enticed the minor to engage in sexual activity that is one of the offenses described in Subsections (2) through (13).

Section 33. Section **77-41-107** is amended to read:

### **77-41-107. Penalties.**

(1) An offender who knowingly fails to register under this chapter or provides false or incomplete information is guilty of:

(a) a third degree felony and shall be sentenced to serve a term of incarceration for not less than 30 days and also at least one year of probation if:

(i) the offender is required to register for a felony conviction or adjudicated delinquent for what would be a felony if the juvenile were an adult of an offense listed in Subsection [~~77-41-102(10)(a) or (18)(a)~~] 77-41-102(1), (11), or (19); or

(ii) the offender is required to register for the offender's lifetime under Subsection 77-41-105(3)(c); or

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(b) a class A misdemeanor and shall be sentenced to serve a term of incarceration for not fewer than 30 days and also at least one year of probation if the offender is required to register for a misdemeanor conviction or is adjudicated delinquent for what would be a misdemeanor if the juvenile were an adult of an offense listed in Subsection ~~[77-41-102(10)(a) or (18)(a)]~~ 77-41-102(1), (11), or (19).

(2) (a) Neither the court nor the Board of Pardons and Parole may release an individual who violates this chapter from serving the term required under Subsection (1).

(b) This Subsection (2) supersedes any other provision of the law contrary to this chapter.

(3) The offender shall register for an additional year for every year in which the offender does not comply with the registration requirements of this chapter.

Section 34. Section **77-41-109** is amended to read:

### **77-41-109. Miscellaneous provisions.**

(1) (a) If an offender is to be temporarily sent on ~~[any]~~ an assignment outside a secure facility in which the offender is confined on ~~[any]~~ an assignment, including, without limitation, firefighting or disaster control, the official who has custody of the offender shall, within a reasonable time prior to removal from the secure facility, notify the local law enforcement agencies where the assignment is to be filled.

(b) This Subsection (1) does not apply to ~~[any person]~~ an offender temporarily released under guard from the institution in which the ~~[person]~~ offender is confined.

(2) Notwithstanding Title 77, Chapter 40a, Expungement, ~~[a person]~~ an offender convicted of ~~[any]~~ an offense listed in Subsection ~~[77-41-102(10) or (18)]~~ 77-41-102(1), (11), or (19) is not relieved from the responsibility to register as required under this section, unless the offender is removed from the registry under Section 77-41-112 or Section 77-41-113.

Section 35. Section **77-41-110** is amended to read:

### **77-41-110. Sex offender, ~~f~~kidnap offender, and child abuse offender registry -- Department to maintain.**

(1) The department shall maintain a ~~[Sex Offender and Kidnap]~~ Sex, Kidnap, and Child Abuse Offender Notification and Registration website on the Internet, which shall contain a disclaimer informing the public:

(a) the information contained on the site is obtained from offenders and the department

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does not guarantee its accuracy or completeness;

(b) members of the public are not allowed to use the information to harass or threaten offenders or members of their families; and

(c) harassment, stalking, or threats against offenders or their families are prohibited and doing so may violate Utah criminal laws.

(2) The [~~Sex Offender and Kidnap~~] Sex, Kidnap, and Child Abuse Offender Notification and Registration website shall be indexed by both the surname of the offender and by postal codes.

(3) The department shall construct the Sex, Kidnap, and Child Abuse Offender Notification and Registration website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(4) Except as provided in Subsection (5), the [~~Sex Offender and Kidnap~~] Sex, Kidnap, and Child Abuse Offender Notification and Registration website shall include the following registry information:

(a) all names and aliases by which the offender is or has been known, but not including any online or Internet identifiers;

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

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

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

(e) a current photograph of the offender;

(f) a list of all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business;

(g) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student;

(h) a list of places where the offender works as a volunteer; and

(i) the crimes listed in Subsections [~~77-41-102(10) and (18)~~] 77-41-102(1), (11), or (19) that the offender has been convicted of or for which the offender has been adjudicated delinquent in juvenile court.

(5) The department, its personnel, and any individual or entity acting at the request or

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upon the direction of the department are immune from civil liability for damages for good faith compliance with this chapter and will be presumed to have acted in good faith by reporting information.

(6) The department shall redact information that, if disclosed, could reasonably identify a victim.

Section 36. Section 77-41-112 (Effective 07/01/24) is amended to read:

### **77-41-112 (Effective 07/01/24). Removal from registry -- Requirements --**

#### **Procedure.**

(1) An offender who is required to register with the Sex [~~and~~], Kidnap, and Child Abuse Offender Registry may petition the court for an order removing the offender from the Sex [~~and~~], Kidnap, and Child Abuse 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;

(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;

(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;



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(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 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

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

(b) [~~Section 76-5-301,~~] kidnapping under Section 76-5-301;

(c) [~~Section 76-5-304,~~] unlawful detention under Section 76-5-304, 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 under Section 76-5-401, 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 under Section 76-5-401.1, 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 under Section 76-5-401.2, and at the time of the offense, the offender is not more than 15 years older than the victim;

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

(h) an offense for which an individual is required to register under Subsection [~~77-41-102(10)(c) or 77-41-102(18)(c)~~] 77-41-102(1)(c), (11)(c), or (19)(c), if the offense is not substantially equivalent to an offense described in Subsection [~~77-41-102(10)(a) or 77-41-102(18)(a)~~] 77-41-102(1)(a), (11)(a), or (19)(a).

(3) (a) (i) An offender seeking removal from the Sex [~~and~~], Kidnap, and Child Abuse 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:

(A) 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; and

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(B) request information from the Department of Corrections regarding whether the offender meets the requirements described in Subsection (1)(a)(ii), (a)(v), (a)(vi), (b)(ii), (b)(iv), (b)(v), [~~or~~] (c)(ii), (c)(iv), or (c)(v).

(ii) Upon request from the bureau under Subsection (3)(b)(i)(B), the Department of Corrections shall issue a document reflecting whether the offender meets the requirements described in Subsection (1)(a)(ii), (a)(v), (a)(vi), (b)(ii), (b)(iv), (b)(v), [~~or~~] (c)(ii), (c)(iv), or (c)(v).

(iii) 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 days after the day on which the bureau issues the certificate.

(iv) The bureau shall provide a copy of the document provided to the bureau under Subsection (3)(b)(ii) 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, and Child Abuse 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

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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~~] determines 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;

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(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) 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, and Child Abuse 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).

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

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

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

(c) intends to primarily reside in this state.

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

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

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

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

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

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Section 37. Section 77-41-113 is amended to read:

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

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

(a) the only offense or offenses for which the individual is on the registry 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) The offenses described in Subsection (1)(a) are:

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

(b) kidnapping[~~, based upon~~] under Subsection 76-5-301(2)(a) or (b);

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

(d) unlawful detention[;] under Section 76-5-304;

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

(f) sodomy, but not forcible sodomy, under 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 or kidnap offender.

(4) An individual who is currently on the Sex [~~and~~], Kidnap, and Child Abuse 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.

(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:

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(i) qualifies for removal from the registry; or

(ii) does not qualify for removal.

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

(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.

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

(9) (a) The department shall provide a response to a request for removal within 30 days of receipt of the request.

(b) If the response under Subsection (9)(a) cannot be provided within 30 days, the department shall notify the individual that the response may be delayed up to 30 additional days.

Section 38. Section **77-41-114** is amended to read:

**77-41-114. Registration for individuals under 18 years old at the time of the offense.**

(1) Except for an offender who is subject to lifetime registration under Subsection 77-41-106(1), the department shall, if the offender was under 18 years old at the time of the offense, maintain, but not publish, the offender's information on the registration website for an offense listed in Subsection [~~77-41-102(10)(a), (c), or (f) or 77-41-102(18)(a), (c), or (f)] 77-41-102(1)(a), (c), or (f), (11)(a), (c), or (f), or (19)(a), (c), or (f).~~

(2) (a) If, based on the information provided to the department by the sentencing court, prosecuting entity, offender, or offender's counsel, the department cannot determine if the offender is eligible for an exemption to publication on the registration website as described in Subsection (1), the department shall continue to publish the offender's information on the registration website.

(b) Information may be provided to the department at any time in order to clarify the offender's age at the time of the offense.

(c) This section does not prohibit the department from seeking or receiving information from individuals or entities other than those identified in Subsection (2)(a).

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(3) This section applies to offenders with a registration requirement on or after May 3, 2023, regardless of when the offender was first required to register.

(4) An offender convicted after May 3, 2023, of an offense committed when the individual was under 18 years old, is not subject to registration requirements under this chapter unless the offender:

- (a) is charged by criminal information in juvenile court under Section 80-6-503;
- (b) is bound over to district court in accordance with Section 80-6-504; and
- (c) is convicted of a qualifying offense described in Subsection [~~77-41-102(10)(a) or 77-41-102(18)(a)~~] 77-41-102(1)(a), (11)(a), or (19)(a).

Section 39. Section **78B-8-302** is amended to read:

### **78B-8-302. Process servers.**

(1) A complaint, a summons, or a subpoena may be served by [~~a person~~] an individual who is:

- (a) 18 years old or older at the time of service; and
- (b) not a party to the action or a party's attorney.

(2) Except as provided in Subsection (5), the following may serve all process issued by the courts of this state:

- (a) a peace officer employed by a political subdivision of the state acting within the scope and jurisdiction of the peace officer's employment;
- (b) a sheriff or appointed deputy sheriff employed by a county of the state;
- (c) a constable, or the constable's deputy, serving in compliance with applicable law;
- (d) an investigator employed by the state and authorized by law to serve civil process;

[~~and~~] or

(e) a private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act.

(3) A private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act, may not make an arrest pursuant to a bench warrant.

(4) While serving process, a private investigator shall:

(a) have on the investigator's [~~person~~] body a visible form of credentials and identification identifying:

- (i) the investigator's name;



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- (ii) that the investigator is a licensed private investigator; and
- (iii) the name and address of the agency employing the investigator or, if the investigator is self-employed, the address of the investigator's place of business;
- (b) verbally communicate to the person being served that the investigator is acting as a process server; and
- (c) print on the first page of each document served:
  - (i) the investigator's name and identification number as a private investigator; and
  - (ii) the address and phone number for the investigator's place of business.
- (5) [~~Any service~~] The following may only serve process under this section when the use of force is authorized on the face of the document, or when a breach of the peace is imminent or likely under the totality of the circumstances[~~, may only be served by~~]:
  - (a) a law enforcement officer, as defined in Section 53-13-103; or
  - (b) a special function officer, as defined in Section 53-13-105, who is:
    - (i) employed as an appointed deputy sheriff by a county of the state; or
    - (ii) a constable.
  - (6) The following may not serve process issued by a court:
    - (a) [~~a person~~] an individual convicted of a felony violation of an offense listed in Subsection [~~77-41-102(18)~~] 77-41-102(19); or
    - (b) [~~a person~~] an individual who is a respondent in a proceeding described in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, in which a court has granted the petitioner a protective order.
  - (7) [~~A person~~] an individual serving process shall:
    - (a) legibly document the date and time of service on the front page of the document being served;
    - (b) legibly print the process server's name, address, and telephone number on the return of service;
    - (c) sign the return of service in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act;
    - (d) if the process server is a peace officer, sheriff, or deputy sheriff, legibly print the badge number of the process server on the return of service; and
    - (e) if the process server is a private investigator, legibly print the private investigator's

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identification number on the return of service.

Section 40. Section **80-5-201** is amended to read:

### **80-5-201. Division responsibilities.**

(1) The division is responsible for all minors committed to the division by juvenile courts under Sections 80-6-703 and 80-6-705.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all minors committed to the division;

(b) establish and maintain all detention and secure care facilities and set minimum standards for all detention and secure care facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated minors placed with the division;

(d) establish observation and assessment programs necessary to serve minors in a nonresidential setting under Subsection 80-6-706(1);

(e) place minors committed to the division under Section 80-6-703 in the most appropriate program for supervision and treatment;

(f) employ staff necessary to:

(i) supervise and control minors committed to the division for secure care or placement in the community;

(ii) supervise and coordinate treatment of minors committed to the division for placement in community-based programs; and

(iii) control and supervise adjudicated and nonadjudicated minors placed with the division for temporary services in juvenile receiving centers, youth services, and other programs established by the division;

(g) control or detain a minor committed to the division, or in the temporary custody of the division, in a manner that is consistent with public safety and rules made by the division;

(h) establish and operate work programs for minors committed to the division by the juvenile court that:

(i) are not residential;

(ii) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

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- (iii) provide educational and prevocational programs in cooperation with the State Board of Education for minors placed in the program; and
- (iv) provide counseling to minors;
- (i) establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities that provide services to minors who have committed an offense in this state or in any other state;
- (j) provide regular training for secure care staff, detention staff, case management staff, and staff of the community-based programs;
- (k) designate employees to obtain the saliva DNA specimens required under Section 53-10-403;
- (l) ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol;
- (m) register an individual with the Department of [~~Corrections~~] Public Safety who:
  - (i) is adjudicated for an offense listed in Subsection [~~77-41-102(18)(a) or 77-43-102(2)~~] 77-41-102(1) or 77-41-102(19);
  - (ii) is committed to the division for secure care; and
  - (iii) (A) if the individual is a youth offender, remains in the division's custody 30 days before the individual's 21st birthday; or
  - (B) if the individual is a serious youth offender, remains in the division's custody 30 days before the individual's 25th birthday; and
- (n) ensure that a program delivered to a minor under this section is an evidence-based program in accordance with Section 63M-7-208.
- (3) (a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to:
  - (i) locate and apprehend minors who have absconded from division custody;
  - (ii) transport minors taken into custody in accordance with division policy;
  - (iii) investigate cases; and
  - (iv) carry out other duties as assigned by the division.
- (b) A special function officer may be:
  - (i) employed through a contract with the Department of Public Safety, or any law enforcement agency certified by the Peace Officer Standards and Training Division; or

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(ii) directly hired by the division.

(4) In the event of an unauthorized leave from secure care, detention, a community-based program, a juvenile receiving center, a home, or any other designated placement of a minor, a division employee has the authority and duty to locate and apprehend the minor, or to initiate action with a local law enforcement agency for assistance.

(5) The division may proceed with an initial medical screening or assessment of a child admitted to a detention facility to ensure the safety of the child and others in the detention facility if the division makes a good faith effort to obtain consent for the screening or assessment from the child's parent or guardian.

### Section 41. **Repealer.**

This bill repeals:

Section 77-41-101, Title.

Section 77-43-101, Title.

~~{ Section 77-43-102 (Superseded 07/01/24), Definitions.~~

+ Section 77-43-102 (Effective 07/01/24), Definitions.

Section 77-43-103, Department duties.

~~{ Section 77-43-104 (Superseded 07/01/24), Registration of offenders -- Department and agency requirements.~~

+ Section 77-43-104 (Effective 07/01/24), Registration of offenders -- Department and agency requirements.

Section 77-43-105, Registration of offenders -- Offender responsibilities.

Section 77-43-106, Penalties.

Section 77-43-107, Classification of information.

Section 77-43-108, Child Abuse Offender Registry -- Department to maintain.

~~{ Section 77-43-109 (Superseded 07/01/24), Fees.~~

+ Section 77-43-109 (Effective 07/01/24), Fees.

Section 42. **Effective date.**

This bill takes effect on July 1, 2024.