

SEX AND KIDNAP OFFENDER REGISTRY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

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

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



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

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

77-41-106. Offenses requiring lifetime registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Section **76-5-311**, human trafficking of a vulnerable adult for sexual exploitation;

~~[(7) Section **76-4-401**, a felony violation of enticing a minor over the Internet;]~~

~~[(8)]~~ (7) Section **76-5-302**, aggravated kidnapping, except if the offender is a natural parent of the victim;

~~[(9)]~~ (8) Section **76-5-403**, forcible sodomy;

~~[(10)]~~ (9) Section **76-5-404.1**, sexual abuse of a child;

~~[(11)]~~ (10) Section **76-5b-201**, sexual exploitation of a minor;

~~[(12)]~~ (11) Section **76-5b-201.1**, aggravated sexual exploitation of a minor;

59 ~~[(13)]~~ (12) Subsection 76-5b-204(2)(b), aggravated sexual extortion; or
60 ~~[(14)]~~ (13) Section 76-10-1306, aggravated exploitation of prostitution, on or after May
61 10, 2011.

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

63 **77-41-112. Removal from registry -- Requirements -- Procedure.**

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

- 67 (a) (i) the offender was convicted of an offense described in Subsection (2);
68 (ii) at least five years have passed after the day on which the offender's sentence for the
69 offense terminated;
70 (iii) the offense is the only offense for which the offender was required to register;
71 (iv) the offender has not been convicted of another offense, excluding a traffic offense,
72 since the day on which the offender was convicted of the offense for which the offender is
73 required to register, as evidenced by a certificate of eligibility issued by the bureau;
74 (v) the offender successfully completed all treatment ordered by the court or the Board
75 of Pardons and Parole relating to the offense; and
76 (vi) the offender has paid all restitution ordered by the court or the Board of Pardons
77 and Parole relating to the offense; or
78 (b) (i) if the offender is required to register in accordance with Subsection
79 77-41-105(3)(a);
80 (ii) at least 10 years have passed after the later of:
81 (A) the day on which the offender was placed on probation;
82 (B) the day on which the offender was released from incarceration to parole;
83 (C) the day on which the offender's sentence was terminated without parole;
84 (D) the day on which the offender entered a community-based residential program; or
85 (E) for a minor, as defined in Section 80-1-102, the day on which the division's custody
86 of the offender was terminated;
87 (iii) the offender has not been convicted of another offense that is a class A
88 misdemeanor, felony, or capital felony within the most recent 10-year period after the date
89 described in Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the

90 bureau;

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

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

95 (c) (i) the offender is required to register in accordance with Subsection
96 77-41-105(3)(c);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 121 (a) Section 76-4-401, enticing a minor~~[, if the offense is a class A misdemeanor]~~;
- 122 (b) Section 76-5-301, kidnapping;
- 123 (c) Section 76-5-304, unlawful detention, if the conviction of violating Section
124 76-5-304 is the only conviction for which the offender is required to register;
- 125 (d) Section 76-5-401, unlawful sexual activity with a minor if, at the time of the
126 offense, the offender is not more than 10 years older than the victim;
- 127 (e) Section 76-5-401.1, sexual abuse of a minor, if, at the time of the offense, the
128 offender is not more than 10 years older than the victim;
- 129 (f) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old, and at the
130 time of the offense, the offender is not more than 15 years older than the victim; or
- 131 (g) Section 76-9-702.7, voyeurism, if the offense is a class A misdemeanor.
- 132 (3) (a) (i) An offender seeking removal from the Sex and Kidnap Offender Registry
133 under this section shall apply for a certificate of eligibility from the bureau.
- 134 (ii) An offender who intentionally or knowingly provides false or misleading
135 information to the bureau when applying for a certificate of eligibility is guilty of a class B
136 misdemeanor and subject to prosecution under Section 76-8-504.6.
- 137 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate
138 of eligibility to an offender who provides false information on an application.
- 139 (b) (i) The bureau shall perform a check of records of governmental agencies,
140 including national criminal databases, to determine whether an offender is eligible to receive a
141 certificate of eligibility.
- 142 (ii) If the offender meets the requirements described in Subsection (1)(a), (b), or (c),
143 the bureau shall issue a certificate of eligibility to the offender, which is valid for a period of 90
144 days after the day on which the bureau issues the certificate.
- 145 (iii) The bureau shall request information from the department regarding whether the
146 offender meets the requirements.
- 147 (iv) (A) Upon request from the bureau under Subsection (3)(b)(iii), the department
148 shall issue a document on whether the offender meets the requirements described in Subsection
149 (1)(a), (b), or (c), which shall be used by the bureau to determine if a certificate of eligibility is
150 appropriate.
- 151 (B) The document from the department shall also include a statement regarding the

152 offender's compliance with all registration requirements under this chapter.

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

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

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

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

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

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

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

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

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

177 (i) presentencing report;

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

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

180 (e) The victim, or the victim's parent or guardian if the victim is a minor under 18 years
181 old, may respond to the petition by filing a recommendation or objection with the court within
182 45 days after the day on which the petition is mailed to the victim.

183 (6) (a) The court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

206 (I) any other relevant factors.

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

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

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

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

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