

**INTERNET SEXUAL CONTENT - PROTECTION  
OF MINORS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Darin G. Peterson

Cosponsor: Bradley M. Daw

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code by amending the penalties for enticing a minor over the Internet in order to commit a sexual offense. This bill also modifies Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances.

**Highlighted Provisions:**

This bill:

- ▶ amends the penalty for enticing a minor to commit a first degree felony sexual offense, so that the enticement offense is a second degree felony for the first violation, and for any subsequent violation is a first degree felony with a specified penalty;
- ▶ includes enticing a minor over the Internet when subsequent contact is by electronic or written means other than the use of a computer;
- ▶ provides that if a defendant commits the offense of enticing a minor to commit any felony sexual offense, and the defendant has previously committed a sexual offense or kidnapping against a minor, the court may not shorten the prison sentence;
- ▶ repeals the following sections:
  - repeals the section establishing an adult content registry and references to the registry; and
  - repeals the section requiring that an Internet services provider must provide to consumers the service of blocking material on the adult content registry;

- 30           ▶ provides a definition of "negligent" regarding material harmful to minors;
- 31           ▶ describes the circumstances under which an Internet service provider or a hosting
- 32 company is not guilty of criminal conduct involving distributing pornographic
- 33 material, inducing acceptance of pornographic material, or dealing in material
- 34 harmful to a minor;
- 35           ▶ increases the minimum mandatory fine for dealing in material harmful to a minor;
- 36           ▶ provides that a felony or class A offense of enticing a minor over the Internet is a
- 37 prior offense regarding sex offender lifetime registration;
- 38           ▶ clarifies the standard applicable to conduct of Internet service providers regarding
- 39 filtering of material harmful to minors from negligently or recklessly to a standard
- 40 of knowing or intentional conduct; and
- 41           ▶ amends the provisions regarding charging the consumer for software that blocks
- 42 material harmful to minors.

43 **Monies Appropriated in this Bill:**

44           None

45 **Other Special Clauses:**

46           This bill provides an immediate effective date.

47 **Utah Code Sections Affected:**

48 AMENDS:

49           **76-4-401**, as last amended by Chapter 164, Laws of Utah 2003

50           **76-10-1201**, as last amended by Chapter 9, Laws of Utah 2001

51           **76-10-1204**, as last amended by Chapter 281, Laws of Utah 2005

52           **76-10-1205**, as last amended by Chapter 281, Laws of Utah 2005

53           **76-10-1206**, as last amended by Chapter 281, Laws of Utah 2005

54           **76-10-1230**, as enacted by Chapter 281, Laws of Utah 2005

55           **76-10-1231**, as enacted by Chapter 281, Laws of Utah 2005

56           **77-27-21.5**, as last amended by Chapters 189, 269 and 334, Laws of Utah 2006

57 REPEALS:

58           **67-5-19**, as enacted by Chapter 281, Laws of Utah 2005

59           **76-10-1232**, as enacted by Chapter 281, Laws of Utah 2005

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

62           Section 1. Section **76-4-401** is amended to read:

63           **76-4-401. Enticing a minor over the Internet -- Elements -- Penalties.**

64           (1) (a) A person commits enticement of a minor over the Internet when the person  
65 knowingly uses a computer to solicit, seduce, lure, or entice, or attempts to use a computer to  
66 solicit, seduce, lure, or entice a minor or a person the defendant believes to be a minor to  
67 engage in any sexual activity which is a violation of state criminal law.

68           (b) A person commits enticement of a minor over the Internet when the person  
69 knowingly uses a computer to initiate contact with a minor or a person the defendant believes  
70 to be a minor and subsequently, by any electronic or written means, solicits, seduces, lures, or  
71 entices, or attempts to solicit, seduce, lure, or entice the minor or a person the defendant  
72 believes to be the minor to engage in any sexual activity which is a violation of state criminal  
73 law.

74           (2) It is not a defense to the crime of enticing a minor under Subsection (1), or an  
75 attempt to commit this offense, that a law enforcement officer or an undercover operative who  
76 is working with a law enforcement agency was involved in the detection or investigation of the  
77 offense.

78           (3) An enticement of a minor under Subsection (1) with the intent to commit:

79           (a) a first degree felony is a:

80           (i) second degree felony upon the first conviction for violation of this Subsection

81 (3)(a); and

82           (ii) first degree felony punishable by imprisonment for an indeterminate term of not  
83 fewer than three years and which may be for life, upon a second or any subsequent conviction  
84 for a violation of this Subsection (3)(a);

85           (b) a second degree felony is a third degree felony;

86 (c) a third degree felony is a class A misdemeanor;  
87 (d) a class A misdemeanor is a class B misdemeanor; and  
88 (e) a class B misdemeanor is a class C misdemeanor.  
89 (4) (a) When a person who commits a felony violation of this section has been  
90 previously convicted of an offense under Subsection (4)(b), the court may not in any way  
91 shorten the prison sentence, and the court may not:  
92 (i) grant probation;  
93 (ii) suspend the execution or imposition of the sentence;  
94 (iii) enter a judgment for a lower category of offense; or  
95 (iv) order hospitalization.  
96 (b) The sections referred to in Subsection (4)(a) are:  
97 (i) Section 76-4-401, enticing a minor over the Internet;  
98 (ii) Section 76-5-301.1, child kidnapping;  
99 (iii) Section 76-5-402, rape;  
100 (iv) Section 76-5-402.1, rape of a child;  
101 (v) Section 76-5-402.2, object rape;  
102 (vi) Section 76-5-402.3, object rape of a child;  
103 (vii) Subsection 76-5-403(2), forcible sodomy;  
104 (viii) Section 76-5-403.1, sodomy on a child;  
105 (ix) Section 76-5-404, forcible sexual abuse;  
106 (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;  
107 (xi) Section 76-5-405, aggravated sexual assault;  
108 (xii) any offense in any other state or federal jurisdiction which constitutes or would  
109 constitute a crime in Subsections (4)(b)(i) through (xi); or  
110 (xiii) the attempt to commit any of the offenses in Subsections (4)(b)(i) through (xii).  
111 Section 2. Section **76-10-1201** is amended to read:  
112 **76-10-1201. Definitions.**  
113 For the purpose of this part:

114 (1) "Contemporary community standards" means those current standards in the  
115 vicinage where an offense alleged under this act has occurred, is occurring, or will occur.

116 (2) "Distribute" means to transfer possession of materials whether with or without  
117 consideration.

118 (3) "Exhibit" means to show.

119 (4) "Harmful to minors" means that quality of any description or representation, in  
120 whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when  
121 it:

122 (a) taken as a whole, appeals to the prurient interest in sex ~~[of]~~ with minors;

123 (b) is patently offensive to prevailing standards in the adult community as a whole with  
124 respect to what is suitable material for minors; and

125 (c) taken as a whole, does not have serious value for minors. Serious value includes  
126 only serious literary, artistic, political, or scientific value for minors.

127 (5) "Knowingly" means an awareness, whether actual or constructive, of the character  
128 of material or of a performance. A person has constructive knowledge if a reasonable  
129 inspection or observation under the circumstances would have disclosed the nature of the  
130 subject matter and if a failure to inspect or observe is either for the purpose of avoiding the  
131 disclosure or is criminally negligent as described in Section 76-2-103.

132 (6) "Material" means anything printed or written or any picture, drawing, photograph,  
133 motion picture, or pictorial representation, or any statue or other figure, or any recording or  
134 transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or  
135 may be used as a means of communication. Material includes undeveloped photographs,  
136 molds, printing plates, and other latent representational objects.

137 (7) "Minor" means any person less than ~~[eighteen]~~ 18 years of age.

138 (8) "Negligently" means simple negligence, the failure to exercise that degree of care  
139 that a reasonable and prudent person would exercise under like or similar circumstances.

140 ~~[(8)]~~ (9) "Nudity" means the showing of the human male or female genitals, pubic area,  
141 or buttocks, with less than an opaque covering, or the showing of a female breast with less than

142 an opaque covering, or any portion thereof below the top of the nipple, or the depiction of  
143 covered male genitals in a discernibly turgid state.

144 ~~[(9)]~~ (10) "Performance" means any physical human bodily activity, whether engaged  
145 in alone or with other persons, including but not limited to singing, speaking, dancing, acting,  
146 simulating, or pantomiming.

147 ~~[(10)]~~ (11) "Public place" includes a place to which admission is gained by payment of  
148 a membership or admission fee, however designated, notwithstanding its being designated a  
149 private club or by words of like import.

150 ~~[(11)]~~ (12) "Sado-masochistic abuse" means flagellation or torture by or upon a person  
151 who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the  
152 condition of being fettered, bound, or otherwise physically restrained on the part of one so  
153 clothed.

154 ~~[(12)]~~ (13) "Sexual conduct" means acts of masturbation, sexual intercourse, or any  
155 touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a  
156 female, breast, whether alone or between members of the same or opposite sex or between  
157 humans and animals in an act of apparent or actual sexual stimulation or gratification.

158 ~~[(13)]~~ (14) "Sexual excitement" means a condition of human male or female genitals  
159 when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging  
160 in or witnessing sexual conduct or nudity.

161 Section 3. Section **76-10-1204** is amended to read:

162 **76-10-1204. Distributing pornographic material -- Exemptions for Internet**  
163 **service providers and hosting companies.**

164 (1) A person is guilty of distributing pornographic material when he knowingly:

165 (a) sends or brings any pornographic material into the state with intent to distribute or  
166 exhibit it to others;

167 (b) prepares, publishes, prints, or possesses any pornographic material with intent to  
168 distribute or exhibit it to others;

169 (c) distributes or offers to distribute, exhibits or offers to exhibit any pornographic

170 material to others;

171 (d) writes, creates, or solicits the publication or advertising of pornographic material;

172 (e) promotes the distribution or exhibition of material he represents to be pornographic;

173 or

174 (f) presents or directs a pornographic performance in any public place or any place  
175 exposed to public view or participates in that portion of the performance which makes it  
176 pornographic.

177 (2) Each distributing of pornographic material as defined in Subsection (1) is a separate  
178 offense.

179 (3) It is a separate offense under this section for:

180 (a) each day's exhibition of any pornographic motion picture film; and

181 (b) each day in which any pornographic publication is displayed or exhibited in a  
182 public place with intent to distribute or exhibit it to others.

183 (4) (a) An offense under this section is a third degree felony punishable by:

184 (i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article  
185 exhibited up to the maximum allowed by law; and

186 (ii) incarceration, without suspension of sentence in any way, for a term of not less than  
187 30 days.

188 (b) This Subsection (4) supersedes Section 77-18-1.

189 ~~[(5) A service provider, as defined in Section 76-10-1230, complies with this section if  
190 it complies with Sections 76-10-1231 and 76-10-1232.]~~

191 (5) (a) This section does not apply to an Internet service provider, as defined in Section  
192 76-10-1230, if:

193 (i) the distribution of pornographic material by the Internet service provider occurs  
194 only incidentally through the Internet service provider's function of:

195 (A) transmitting or routing data from one person to another person; or

196 (B) providing a connection between one person and another person;

197 (ii) the Internet service provider does not intentionally aid or abet in the distribution of

198 the pornographic material; and

199 (iii) the Internet service provider does not knowingly receive funds from or through a  
200 person who distributes the pornographic material in exchange for permitting the person to  
201 distribute the pornographic material.

202 (b) This section does not apply to a hosting company, as defined in Section  
203 76-10-1230, if:

204 (i) the distribution of pornographic material by the hosting company occurs only  
205 incidentally through the hosting company's function of providing data storage space or data  
206 caching to a person;

207 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
208 of the pornographic material; and

209 (iii) the hosting company does not knowingly receive funds from or through a person  
210 who distributes the pornographic material in exchange for permitting the person to distribute,  
211 store, or cache the pornographic material.

212 Section 4. Section **76-10-1205** is amended to read:

213 **76-10-1205. Inducing acceptance of pornographic material -- Exemptions for**  
214 **Internet service providers and hosting companies.**

215 (1) A person is guilty of inducing acceptance of pornographic material when he  
216 knowingly:

217 (a) requires or demands as a condition to a sale, allocation, consignment, or delivery  
218 for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that  
219 the purchaser or consignee receive any pornographic material or material reasonably believed  
220 by the purchaser or consignee to be pornographic; or

221 (b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any  
222 penalty, financial or otherwise, because of the failure or refusal to accept pornographic material  
223 or material reasonably believed by the purchaser or consignee to be pornographic.

224 (2) (a) An offense under this section is a third degree felony punishable by:

225 (i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article

226 exhibited up to the maximum allowed by law; and

227 (ii) incarceration, without suspension of sentence in any way, for a term of not less than  
228 30 days.

229 (b) This Subsection (2) supersedes Section 77-18-1.

230 [~~(3) A service provider, as defined in Section 76-10-1230, complies with this section if~~  
231 ~~it complies with Sections 76-10-1231 and 76-10-1232.~~]

232 (3) (a) This section does not apply to an Internet service provider, as defined in Section  
233 76-10-1230, if:

234 (i) the distribution of pornographic material by the Internet service provider occurs  
235 only incidentally through the Internet service provider's function of:

236 (A) transmitting or routing data from one person to another person; or

237 (B) providing a connection between one person and another person;

238 (ii) the Internet service provider does not intentionally aid or abet in the distribution of  
239 the pornographic material; and

240 (iii) the Internet service provider does not knowingly receive funds from or through a  
241 person who distributes the pornographic material in exchange for permitting the person to  
242 distribute the pornographic material.

243 (b) This section does not apply to a hosting company, as defined in Section  
244 76-10-1230, if:

245 (i) the distribution of pornographic material by the hosting company occurs only  
246 incidentally through the hosting company's function of providing data storage space or data  
247 caching to a person;

248 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
249 of the pornographic material; and

250 (iii) the hosting company does not knowingly receive funds from or through a person  
251 who distributes the pornographic material in exchange for permitting the person to distribute,  
252 store, or cache the pornographic material.

253 Section 5. Section **76-10-1206** is amended to read:

254           **76-10-1206. Dealing in material harmful to a minor -- Exemptions for Internet**  
255 **service providers and hosting companies.**

256           (1) A person is guilty of dealing in material harmful to minors when, knowing that a  
257 person is a minor, or having negligently [~~or recklessly~~] failed to determine the proper age of a  
258 minor, [~~he~~] the person:

259           (a) intentionally distributes or offers to distribute, exhibits or offers to exhibit to a  
260 minor any material harmful to minors;

261           (b) intentionally produces, presents, or directs any performance before a minor, that is  
262 harmful to minors; or

263           (c) intentionally participates in any performance before a minor, that is harmful to  
264 minors.

265           (2) (a) Each separate offense under this section is a third degree felony punishable by:

266           (i) a minimum mandatory fine of not less than [~~\$300~~] \$1,000 plus \$10 for each article  
267 exhibited up to the maximum allowed by law; and

268           (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

269           (b) This section supersedes Section 77-18-1.

270           (3) (a) If a defendant has already been convicted once under this section, each separate  
271 further offense is a second degree felony punishable by:

272           (i) a minimum mandatory fine of not less than \$5,000 plus \$10 for each article  
273 exhibited up to the maximum allowed by law; and

274           (ii) incarceration, without suspension of sentence, for a term of not less than one year.

275           (b) This section supersedes Section 77-18-1.

276           (c) (i) This section does not apply to an Internet service provider, as defined in Section  
277 76-10-1230, if:

278           (A) the distribution of pornographic material by the Internet service provider occurs  
279 only incidentally through the Internet service provider's function of:

280           (I) transmitting or routing data from one person to another person; or

281           (II) providing a connection between one person and another person;

282 (B) the Internet service provider does not intentionally aid or abet in the distribution of  
283 the pornographic material; and

284 (C) the Internet service provider does not knowingly receive funds from or through a  
285 person who distributes the pornographic material in exchange for permitting the person to  
286 distribute the pornographic material.

287 (ii) This section does not apply to a hosting company, as defined in Section  
288 76-10-1230, if:

289 (A) the distribution of pornographic material by the hosting company occurs only  
290 incidentally through the hosting company's function of providing data storage space or data  
291 caching to a person;

292 (B) the hosting company does not intentionally engage, aid, or abet in the distribution  
293 of the pornographic material; and

294 (C) the hosting company does not knowingly receive funds from or through a person  
295 who distributes the pornographic material in exchange for permitting the person to distribute,  
296 store, or cache the pornographic material.

297 (4) (a) A service provider, as defined in Section 76-10-1230, [~~complies with~~] is not  
298 negligent under this section if it complies with [~~Sections~~] Section 76-10-1231 [~~and~~  
299 ~~76-10-1232~~].

300 (b) A content provider, as defined in Section 76-10-1230, [~~complies with~~] is not  
301 negligent under this section if it complies with Section 76-10-1233.

302 Section 6. Section **76-10-1230** is amended to read:

303 **76-10-1230. Definitions.**

304 As used in Sections 76-10-1231[, ~~76-10-1232~~,] and 76-10-1233:

305 (1) "Access restricted" means that a content provider limits access to material harmful  
306 to minors by:

307 (a) properly rating content;

308 (b) providing an age verification mechanism designed to prevent a minor's access to  
309 material harmful to minors, including requiring use of a credit card, adult access code, or

310 digital certificate verifying age; or

311 (c) any other reasonable measures feasible under available technology.

312 [~~(2)~~] "Adult content registry" means the adult content registry created by Section  
313 ~~67-5-19.~~]

314 [~~(3)~~] (2) "Consumer" means a natural person residing in this state who subscribes to a  
315 service provided by a service provider for personal or residential use.

316 [~~(4)~~] (3) "Content provider" means a person [~~that~~] domiciled in Utah or that generates  
317 or hosts content in Utah, and that creates, collects, acquires, or organizes electronic data for  
318 electronic delivery to a consumer with the intent of making a profit.

319 [~~(5)~~] (4) (a) "Hosting company" means a person that provides services or facilities for  
320 storing or distributing content over the Internet without editorial or creative alteration of the  
321 content.

322 (b) A hosting company may have policies concerning acceptable use without becoming  
323 a content provider under Subsection [~~(4)~~] (3).

324 [~~(6)~~] (5) (a) "Internet service provider" means a person engaged in the business of  
325 providing a computer [~~and~~] communications facility in Utah, with the intent of making a profit,  
326 through which a consumer may obtain access to the Internet.

327 (b) "Internet service provider" does not include a common carrier if it provides only  
328 telecommunications service.

329 [~~(7)~~] (6) "Properly rated" means content using a labeling system to label material  
330 harmful to minors provided by the content provider in a way that:

331 (a) accurately appraises a consumer of the presence of material harmful to minors; and

332 (b) allows the consumer the ability to control access to material harmful to minors  
333 based on the material's rating by use of reasonably priced commercially available software,  
334 including software in the public domain.

335 [~~(8)~~] (7) (a) Except as provided in Subsection [~~(8)~~] (7)(b), "service provider" means:

336 (i) an Internet service provider; or

337 (ii) a person who otherwise provides an Internet access service to a consumer in Utah

338 with the intent of making a profit.

339 (b) "Service provider" does not include a person who does not terminate a service in  
340 this state, but merely transmits data through:

341 (i) a wire;

342 (ii) a cable; or

343 (iii) an antenna.

344 (c) "Service provider," notwithstanding Subsection ~~[(8)]~~ (7)(b), includes a person who  
345 meets the requirements of Subsection ~~[(8)]~~ (7)(a) and leases or rents a wire or cable for the  
346 transmission of data.

347 Section 7. Section **76-10-1231** is amended to read:

348 **76-10-1231. Data service providers -- Internet content harmful to minors.**

349 (1) (a) Upon request by a consumer, a service provider shall filter content to prevent  
350 the transmission of material harmful to minors to the consumer.

351 (b) A service provider complies with Subsection (1)(a) if it uses a generally accepted  
352 and commercially reasonable method of filtering.

353 (2) At the time of a consumer's subscription to a service provider's service, or at the  
354 time this section takes effect if the consumer subscribes to the service provider's service at the  
355 time this section takes effect, the service provider shall notify the consumer in a conspicuous  
356 manner that the consumer may request to have material harmful to minors blocked under  
357 Subsection (1).

358 (3) (a) A service provider may comply with Subsection (1) by:

359 (i) providing in-network filtering to prevent receipt of material harmful to minors,  
360 provided that the filtering does not affect or interfere with access to Internet content for  
361 consumers who do not request filtering under Subsection (1); or

362 (ii) providing software, or engaging a third party to provide software, for  
363 contemporaneous installation on the consumer's computer that blocks, in an easy-to-enable and  
364 commercially reasonable manner, receipt of material harmful to minors.

365 ~~[(b) (i) Except as provided in Subsection (3)(b)(ii), a service provider may not charge a~~

366 consumer for blocking material or providing software under this section, except that a service  
367 provider may increase the cost to all subscribers to the service provider's services to recover the  
368 cost of complying with this section.]

369 ~~[(ii) A service provider with fewer than 7,500 subscribers may charge a consumer for~~  
370 ~~providing software under Subsection (3)(a)(ii) if the charge does not exceed the service~~  
371 ~~provider's cost for the software.]~~

372 (b) A service provider may charge a consumer for providing filtering under Subsection  
373 (3)(a).

374 (4) If the attorney general determines that a service provider violates Subsection (1) or  
375 (2), the attorney general shall:

376 (a) notify the service provider that the service provider is in violation of Subsection (1)  
377 or (2); and

378 (b) notify the service provider that the service provider has 30 days to comply with the  
379 provision being violated or be subject to Subsection (5).

380 (5) A service provider that violates Subsection (1) or (2) is:

381 (a) subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2),  
382 up to \$10,000 per day; and

383 (b) guilty of a class A misdemeanor if:

384 (i) the service provider knowingly or intentionally fails to comply with Subsection (1);  
385 or

386 (ii) the service provider fails to provide the notice required by Subsection (2).

387 (6) A proceeding to impose a civil fine under Subsection (5)(a) may only be brought by  
388 the attorney general in a court of competent jurisdiction.

389 (7) (a) The Division of Consumer Protection within the Department of Commerce  
390 shall, in consultation with other entities as the Division of Consumer Protection considers  
391 appropriate, test the effectiveness of a service provider's system for blocking material harmful  
392 to minors under Subsection (1) at least annually.

393 (b) The results of testing by the Division of Consumer Protection under Subsection

394 (7)(a) shall be made available to:

395 (i) the service provider that is the subject of the test; and

396 (ii) the public.

397 (c) The Division of Consumer Protection shall make rules in accordance with Title 63,  
398 Chapter 46a, Utah Administrative Rulemaking Act, to fulfil its duties under this section.

399 Section 8. Section **77-27-21.5** is amended to read:

400 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**  
401 **and courts to report -- Registration -- Penalty -- Effect of expungement.**

402 (1) As used in this section:

403 (a) "Department" means the Department of Corrections.

404 (b) "Division" means the Division of Juvenile Justice Services.

405 (c) "Employed" or "carries on a vocation" includes employment that is full time or part  
406 time, whether financially compensated, volunteered, or for the purpose of government or  
407 educational benefit.

408 (d) "Notification" means a person's acquisition of information from the department  
409 about a sex offender, including his place of habitation, physical description, and other  
410 information as provided in Subsections (12) and (13).

411 (e) "Register" means to comply with the rules of the department made under this  
412 section.

413 (f) "Sex offender" means any person:

414 (i) convicted by this state of:

415 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor  
416 over the Internet;

417 (B) Section 76-5-301.1, kidnapping of a child;

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

419 (D) Section 76-5-401.1, sexual abuse of a minor;

420 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

421 (F) Section 76-5-402, rape;

- 422 (G) Section 76-5-402.1, rape of a child;
- 423 (H) Section 76-5-402.2, object rape;
- 424 (I) Section 76-5-402.3, object rape of a child;
- 425 (J) a felony violation of Section 76-5-403, forcible sodomy;
- 426 (K) Section 76-5-403.1, sodomy on a child;
- 427 (L) Section 76-5-404, forcible sexual abuse;
- 428 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;
- 429 (N) Section 76-5-405, aggravated sexual assault;
- 430 (O) Section 76-5a-3, sexual exploitation of a minor;
- 431 (P) Section 76-7-102, incest;
- 432 (Q) Section 76-9-702.5, lewdness involving a child;
- 433 (R) Section 76-10-1306, aggravated exploitation of prostitution; or
- 434 (S) attempting, soliciting, or conspiring to commit any felony offense listed in
- 435 Subsection (1)(f)(i);
- 436 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to
- 437 commit a crime in another state or by the United States government that is substantially
- 438 equivalent to the offenses listed in Subsection (1)(f)(i) and who is:
- 439 (A) a Utah resident; or
- 440 (B) not a Utah resident, but who is in the state for ten days, regardless of whether or
- 441 not the offender intends to permanently reside in this state;
- 442 (iii) who is required to register as a sex offender in any other state or United States
- 443 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
- 444 the offender intends to permanently reside in this state;
- 445 (iv) who is a nonresident regularly employed, working, or a student in this state and
- 446 was convicted of one or more offenses listed in Subsection (1)(f)(i), or any substantially
- 447 equivalent offense in another state or by the United States government, and as a result of the
- 448 conviction, is required to register in the person's state of residence;
- 449 (v) who is found not guilty by reason of insanity in this state, any other state, or by the

450 United States government of one or more offenses listed in Subsection (1)(f)(i); or  
451 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection  
452 (1)(f)(i) and who has been committed to the division for secure confinement and remains in the  
453 division's custody 30 days prior to the person's 21st birthday.

454 (2) The department, to assist in investigating sex-related crimes and in apprehending  
455 offenders, shall:

456 (a) develop and operate a system to collect, analyze, maintain, and disseminate  
457 information on sex offenders and sex offenses; and

458 (b) make information collected and developed under this section available to the  
459 public.

460 (3) Any law enforcement agency shall, in the manner prescribed by the department,  
461 inform the department of:

462 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(f), within  
463 three working days; and

464 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(f),  
465 within five working days.

466 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(f), the  
467 convicting court shall within three working days forward a copy of the judgment and sentence  
468 to the department.

469 (5) A sex offender in the custody of the department shall be registered by agents of the  
470 department upon:

471 (a) being placed on probation;

472 (b) commitment to a secure correctional facility operated by or under contract to the  
473 department;

474 (c) release from confinement to parole status, termination or expiration of sentence, or  
475 escape;

476 (d) entrance to and release from any community-based residential program operated by  
477 or under contract to the department; or

478 (e) termination of probation or parole.

479 (6) A sex offender not in the custody of the department and who is confined in a  
480 correctional facility not operated by or under contract to the department shall be registered with  
481 the department by the sheriff of the county in which the offender is confined upon:

482 (a) commitment to the correctional facility; and

483 (b) release from confinement.

484 (7) A sex offender in the custody of the division shall be registered with the department  
485 by the division prior to release from custody.

486 (8) A sex offender committed to a state mental hospital shall be registered with the  
487 department by the hospital upon admission and upon discharge.

488 (9) A sex offender convicted by any other state or by the United States government is  
489 required to register under Subsection (1)(f)(ii) and shall register with the department within ten  
490 days of entering the state, regardless of the length of stay.

491 (10) (a) Except as provided in Subsections (10)(b), (c), and (d), a sex offender shall, for  
492 the duration of the sentence and for ten years after termination of sentence or custody of the  
493 division, register annually during the month of the offender's birth and again within five days of  
494 every change of his place of habitation, vehicle information, or educational information  
495 required to be submitted under Subsection (12).

496 (b) Except as provided Subsections (10)(c) and (d), a sex offender who is convicted of  
497 an offense listed in Subsection (1)(f)(i) by another state shall register for the time period  
498 required by the state where the offender was convicted if the state's registration period for the  
499 offense that the offender was convicted of is in excess of the ten years from completion of the  
500 sentence registration period that is required under Subsection (10)(a).

501 (c) (i) A sex offender convicted as an adult of any of the offenses listed in Subsection  
502 (10)(c)(ii) shall, for the offender's lifetime, register annually during the month of the offender's  
503 birth and again within five days of every change of the offender's place of habitation, vehicle  
504 information, or educational information required to be submitted under Subsection (12). This  
505 registration requirement is not subject to exemptions and may not be terminated or altered

506 during the offender's lifetime.

507 (ii) Offenses referred to in Subsection (10)(c)(i) are:

508 (A) any offense listed in Subsection (1)(f) if, at the time of the conviction, the offender

509 has previously been convicted of an offense listed in Subsection (1)(f) or has previously been

510 required to register as a sex offender for an offense committed as a juvenile;

511 [~~(B) Section 76-5-402.1, rape of a child;~~]

512 [~~(C) Section 76-5-402.3, object rape of a child;~~]

513 (B) Section 76-4-401, enticing a minor over the Internet, if the offense is a class A or

514 felony violation;

515 (C) Section 76-5-301.1, child kidnapping;

516 (D) Section 76-5-402, rape;

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

518 (F) Section 76-5-402.2, object rape;

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

520 [~~(D)~~] (H) Section 76-5-403, forcible sodomy;

521 [~~(E)~~] (I) Section 76-5-403.1, sodomy on a child;

522 [~~(F) Section 76-5-405, aggravated sexual assault;~~]

523 [~~(G) Section 76-5-301.1, child kidnapping;~~]

524 [~~(H)~~] (J) Section 76-5-404.1, sexual abuse of a child;

525 [~~(I)~~] (K) Subsection 76-5-404.1(4), aggravated sexual abuse of a child;

526 [~~(J) Section 76-5a-3, sexual exploitation of a minor;~~]

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

528 (M) Section 76-5a-3, sexual exploitation of a minor; or

529 [~~(K)~~] (N) Section 76-7-102, incest[;];

530 [~~(L) Section 76-5-402, rape; or~~]

531 [~~(M) Section 76-5-402.2, object rape;~~]

532 (d) Notwithstanding Subsections (10)(a), (b), and (c), a sex offender who is confined in

533 a secure facility or in a state mental hospital is not required to register annually.

534 (e) A sex offender that is required to register annually under this Subsection (10) shall  
535 surrender the sex offender's license certificate or identification card as required under  
536 Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification  
537 card as provided under Section 53-3-205 or 53-3-804.

538 (11) An agency in the state that registers a sex offender on probation, a sex offender  
539 who has been released from confinement to parole status or termination, or a sex offender  
540 whose sentence has expired shall inform the offender of the duty to comply with:

541 (a) the continuing registration requirements of this section during the period of  
542 registration required in Subsection (10), including:

543 (i) notification to the state agencies in the states where the registrant presently resides  
544 and plans to reside when moving across state lines;

545 (ii) verification of address at least every 60 days pursuant to a parole agreement for  
546 lifetime parolees; and

547 (iii) notification to the out-of-state agency where the offender is living, whether or not  
548 the offender is a resident of that state; and

549 (b) the driver license certificate or identification card surrender requirement under  
550 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or  
551 53-3-804.

552 (12) A sex offender shall provide the department with the following information:

553 (a) all names or aliases the sex offender is or has been known by;

554 (b) the sex offender's name and residential address;

555 (c) a physical description, including the sex offender's age, height, weight, eye and hair  
556 color;

557 (d) the type of vehicle or vehicles the sex offender drives;

558 (e) a current photograph of the sex offender; and

559 (f) each educational institution in Utah at which the sex offender is employed, carries  
560 on a vocation, or is a student, and any change of enrollment or employment status of the sex  
561 offender at any educational institution.

562 (13) The department shall:

563 (a) provide the following additional information when available:

564 (i) the crimes the sex offender was convicted of or adjudicated delinquent for; and

565 (ii) a description of the sex offender's primary and secondary targets; and

566 (b) ensure that the registration information collected regarding a sex offender's

567 enrollment or employment at an educational institution is:

568 (i) (A) promptly made available to any law enforcement agency that has jurisdiction

569 where the institution is located if the educational institution is an institution of higher

570 education; or

571 (B) promptly made available to the district superintendent of the school district where

572 the offender is enrolled if the educational institution is an institution of primary education; and

573 (ii) entered into the appropriate state records or data system.

574 (14) (a) A sex offender who knowingly fails to register under this section is guilty of:

575 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not

576 less than 90 days and also at least one year of probation if:

577 (A) the sex offender is required to register for a felony conviction of an offense listed

578 in Subsection (1)(f)(i); or

579 (B) the sex offender is required to register for the offender's lifetime under Subsection

580 (10)(c); or

581 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for

582 not fewer than 90 days and also at least one year of probation if the sex offender is required to

583 register for a misdemeanor conviction of an offense listed in Subsection (1)(f)(i).

584 (b) Neither the court nor the Board of Pardons and Parole may release a person who

585 violates this section from serving the term required under Subsection (14)(a). This Subsection

586 (14)(b) supersedes any other provision of the law contrary to this section.

587 (15) Notwithstanding Title 63, Chapter 2, Government Records Access and

588 Management Act, information in Subsections (12) and (13) collected and released under this

589 section is public information.

590 (16) (a) If a sex offender is to be temporarily sent outside a secure facility in which he  
591 is confined on any assignment, including, without limitation, firefighting or disaster control,  
592 the official who has custody of the offender shall, within a reasonable time prior to removal  
593 from the secure facility, notify the local law enforcement agencies where the assignment is to  
594 be filled.

595 (b) This Subsection (16) does not apply to any person temporarily released under guard  
596 from the institution in which he is confined.

597 (17) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a  
598 person convicted of any offense listed in Subsection (1)(f) is not relieved from the  
599 responsibility to register as required under this section.

600 (18) Notwithstanding Section 42-1-1, a sex offender:

601 (a) may not change his name:

602 (i) while under the jurisdiction of the department; and

603 (ii) until the registration requirements of this statute have expired; or

604 (b) may not change his name at any time, if registration is under Subsection (10)(c).

605 (19) The department may make rules necessary to implement this section, including:

606 (a) the method for dissemination of the information; and

607 (b) instructions to the public regarding the use of the information.

608 (20) Any information regarding the identity or location of a victim shall be redacted by  
609 the department from information provided under Subsections (12) and (13).

610 (21) Nothing in this section shall be construed to create or impose any duty on any  
611 person to request or obtain information regarding any sex offender from the department.

612 (22) The department shall post registry information on the Internet, and the website  
613 shall contain a disclaimer informing the public of the following:

614 (a) the information contained on the site is obtained from sex offenders and the  
615 department does not guarantee its accuracy;

616 (b) members of the public are not allowed to use the information to harass or threaten  
617 sex offenders or members of their families; and

618 (c) harassment, stalking, or threats against sex offenders or their families are prohibited  
619 and doing so may violate Utah criminal laws.

620 (23) The website shall be indexed by both the surname of the offender and by postal  
621 codes.

622 (24) The department shall construct the website so that users, before accessing registry  
623 information, must indicate that they have read the disclaimer, understand it, and agree to  
624 comply with its terms.

625 (25) The department, its personnel, and any individual or entity acting at the request or  
626 upon the direction of the department are immune from civil liability for damages for good faith  
627 compliance with this section and will be presumed to have acted in good faith by reporting  
628 information.

629 (26) The department shall redact information that, if disclosed, could reasonably  
630 identify a victim.

631 (27) (a) Each sex offender required to register under Subsection (10), who is not  
632 currently under the jurisdiction of the Department of Corrections, shall pay to the department  
633 an annual fee of \$75 each year the sex offender is subject to the registration requirements.

634 (b) The department shall deposit fees under this Subsection (27) in the General Fund as  
635 a dedicated credit, to be used by the department for maintaining the sex offender registry under  
636 this section and monitoring sex offender registration compliance, including the costs of:

637 (i) data entry;

638 (ii) processing registration packets;

639 (iii) updating registry information;

640 (iv) ensuring sex offender compliance with registration requirements under this  
641 section; and

642 (v) apprehending offenders who are in violation of the sex offender registration  
643 requirements under this section.

644 **Section 9. Repealer.**

645 This bill repeals:

646 Section **67-5-19, Adult content registry.**

647 Section **76-10-1232, Data service providers -- Adult content registry.**

648 Section 10. **Effective date.**

649 If approved by two-thirds of all the members elected to each house, this bill takes effect

650 upon approval by the governor, or the day following the constitutional time limit of Utah

651 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

652 the date of veto override.