

BUREAU OF CRIMINAL IDENTIFICATION REPORTING

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Don L. Ipson

LONG TITLE

Committee Note:

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

General Description:

This bill requires reporting of certain information by the courts to the Bureau of Criminal Identification.

Highlighted Provisions:

This bill:

- ▶ requires the clerk of the district court to report information on individuals mentally unfit to purchase firearms to the Bureau of Criminal Identification;
- ▶ requires the Bureau of Criminal Identification to submit information reported by the courts on individuals mentally unfit to purchase firearms to the National Instant Criminal Background Check System;
- ▶ requires the clerk of the district court to report information on individuals subject to a protective order to the Bureau of Criminal Identification; and
- ▶ requires the Bureau of Criminal Identification to submit information reported by the courts on individuals subject to a protective order to the National Crime Information Center.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53-10-102**, as last amended by Laws of Utah 2010, Chapter 276

33 **53-10-208**, as last amended by Laws of Utah 2009, Chapters 292 and 356

34 **53-10-208.1**, as last amended by Laws of Utah 2011, Chapter 366

35 **78B-7-106**, as last amended by Laws of Utah 2018, Chapters 124 and 255

36 ENACTS:

37 **53-10-213**, Utah Code Annotated 1953



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

40 Section 1. Section **53-10-102** is amended to read:

41 **53-10-102. Definitions.**

42 As used in this chapter:

43 (1) "Administration of criminal justice" means performance of any of the following:
44 detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication,
45 correctional supervision, or rehabilitation of accused persons or criminal offenders.

46 (2) "Alcoholic beverage" is as defined in Section **32B-1-102**.

47 (3) "Alcoholic product" is as defined in Section **32B-1-102**.

48 (4) "Commission" means the Alcoholic Beverage Control Commission.

49 (5) "Communications services" means the technology of reception, relay, and
50 transmission of information required by public safety agencies in the performance of their duty.

51 (6) "Conviction record" means criminal history information indicating a record of a
52 criminal charge which has led to a declaration of guilt of an offense.

53 (7) "Criminal history record information" means information on individuals consisting
54 of identifiable descriptions and notations of:

55 (a) arrests, detentions, indictments, informations, or other formal criminal charges, and
56 any disposition arising from any of them; and

57 (b) sentencing, correctional supervision, and release.

58 ~~(8) "Criminalist" means the scientific discipline directed to the recognition,~~

59 identification, individualization, and evaluation of physical evidence by application of the
60 natural sciences in law-science matters.]

61 ~~[(9)]~~ (8) "Criminal justice agency" means courts or a government agency or
62 subdivision of a government agency that administers criminal justice under a statute, executive
63 order, or local ordinance and that allocates greater than 50% of its annual budget to the
64 administration of criminal justice.

65 (9) "Criminalist" means the scientific discipline directed to the recognition,
66 identification, individualization, and evaluation of physical evidence by application of the
67 natural sciences in law-science matters.

68 (10) "Department" means the Department of Public Safety.

69 (11) "Director" means the division director appointed under Section 53-10-103.

70 (12) "Division" means the Criminal Investigations and Technical Services Division
71 created in Section 53-10-103.

72 (13) "Executive order" means an order of the president of the United States or the chief
73 executive of a state that has the force of law and that is published in a manner permitting
74 regular public access to it.

75 (14) "Forensic" means dealing with the application of scientific knowledge relating to
76 criminal evidence.

77 (15) "Mental defective" means an individual who, by a ~~H~~→ district ←~~H~~ court,
77a ~~H~~→ [board, commission, or
78 other lawful authority] as a result of marked subnormal intelligence, or mental illness,
78a incompetency, condition, or disease, ←~~H~~ is found:

79 (a) to be a danger to himself or herself or others;

80 (b) to lack the mental capacity to contract or manage the individual's own affairs;

81 (c) to be incompetent by a court in a criminal case; or

82 (d) to be incompetent to stand trial or found not guilty by reason or lack of mental
83 responsibility.

84 ~~[(15)]~~ (16) "Missing child" means any person under the age of 18 years who is missing
85 from the person's home environment or a temporary placement facility for any reason and
86 whose location cannot be determined by the person responsible for the child's care.

87 ~~[(16)]~~ (17) "Missing person" is as defined in Section 26-2-27.

88 ~~[(17)]~~ (18) "Pathogens" means disease-causing agents.

89 ~~[(18)]~~ (19) "Physical evidence" means something submitted to the bureau to determine

90 the truth of a matter using scientific methods of analysis.

91 ~~[(19)]~~ (20) "Qualifying entity" means a business, organization, or a governmental entity
92 that employs persons or utilizes volunteers who deal with:

- 93 (a) national security interests;
- 94 (b) care, custody, or control of children;
- 95 (c) fiduciary trust over money;
- 96 (d) health care to children or vulnerable adults; or
- 97 (e) the provision of any of the following to a vulnerable adult:
 - 98 (i) care;
 - 99 (ii) protection;
 - 100 (iii) food, shelter, or clothing;
 - 101 (iv) assistance with the activities of daily living; or
 - 102 (v) assistance with financial resource management.

103 Section 2. Section **53-10-208** is amended to read:

104 **53-10-208. Definition -- Offenses included on statewide warrant system --**
 105 **Transportation fee to be included -- Statewide warrant system responsibility -- Quality**
 106 **control -- Training -- Technical support -- Transaction costs.**

107 (1) "Statewide warrant system" means the portion of the state court computer system
108 that is accessible by modem from the state mainframe computer and contains:

- 109 (a) records of criminal warrant information; and
- 110 (b) after notice and hearing, records of protective orders issued pursuant to:
 - 111 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
 - 112 (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.

113 (2) (a) The division shall include on the statewide warrant system all warrants issued
114 for felony offenses and class A, B, and C misdemeanor offenses in the state.

115 (b) The division shall include on the statewide warrant system all warrants issued for
116 failure to appear on a traffic citation as ordered by a magistrate under Subsection 77-7-19(3).

117 (c) For each warrant, the division shall indicate whether the magistrate ordered under
118 Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

119 (3) The division is the agency responsible for the statewide warrant system and shall:

- 120 (a) ensure quality control of all warrants of arrest or commitment and protective orders

121 contained in the statewide warrant system by conducting regular validation checks with every
 122 clerk of a court responsible for entering the information on the system;

123 (b) upon the expiration of the protective orders and in the manner prescribed by the
 124 division, purge information regarding protective orders described in [Subsection

125 ~~53-10-208.1(4)~~ Subsection 53-10-208.1(1)(d) within 30 days of the time after expiration;

126 (c) establish system procedures and provide training to all criminal justice agencies
 127 having access to information contained on the state warrant system;

128 (d) provide technical support, program development, and systems maintenance for the
 129 operation of the system; and

130 (e) pay data processing and transaction costs for state, county, and city law
 131 enforcement agencies and criminal justice agencies having access to information contained on
 132 the state warrant system.

133 (4) (a) Any data processing or transaction costs not funded by legislative appropriation
 134 shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

135 (b) This Subsection (4) supersedes any conflicting provision in Subsection (3)(e).

136 Section 3. Section **53-10-208.1** is amended to read:

137 **53-10-208.1. Magistrates and court clerks to supply information.**

138 (1) Every magistrate or clerk of a court responsible for court records in this state shall,
 139 within 30 days of the disposition and on forms and in the manner provided by the division,
 140 furnish the division with information pertaining to:

141 ~~[(h)]~~ (a) all dispositions of criminal matters, including:

142 ~~[(a)]~~ (i) guilty pleas;

143 ~~[(b)]~~ (ii) convictions;

144 ~~[(c)]~~ (iii) dismissals;

145 ~~[(d)]~~ (iv) acquittals;

146 ~~[(e)]~~ (v) pleas held in abeyance;

147 ~~[(f)]~~ (vi) judgments of not guilty by reason of insanity ~~[for a violation of:]~~;

148 ~~[(i) a felony offense;]~~

149 ~~[(ii) Title 76, Chapter 5, Offenses Against the Person; or]~~

150 ~~[(iii) Title 76, Chapter 10, Part 5, Weapons;]~~

151 ~~[(g)]~~ (vii) judgments of guilty with a mental illness;

152 ~~[(h)]~~ (viii) finding of mental incompetence to stand trial ~~[for a violation of:]; and~~
 153 ~~[(i) a felony offense;]~~
 154 ~~[(ii) Title 76, Chapter 5, Offenses Against the Person; or]~~
 155 ~~[(iii) Title 76, Chapter 10, Part 5, Weapons; or]~~
 156 ~~[(i)]~~ (ix) probations granted; ~~[and]~~
 157 ~~[(2)]~~ (b) orders of civil commitment under the terms of Section [62A-15-631](#);
 158 ~~[(3)]~~ (c) the issuance, recall, cancellation, or modification of all warrants of arrest or
 159 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section [78B-6-303](#),
 160 within one day of the action and in a manner provided by the division; and
 161 ~~[(4)]~~ (d) protective orders issued after notice and hearing, pursuant to:
 162 ~~[(a)]~~ (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
 163 ~~[(b)]~~ (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.
 164 (2) The court in the county where a determination or finding was made shall transmit a
 165 record of the determination or finding to the bureau no later than 48 hours after receiving
 166 notice, excluding Saturdays, Sundays, and legal holidays, if an individual is:
 167 (a) adjudicated as a mental defective; or
 168 (b) involuntarily committed to a mental institution in accordance with Section [62A-15-](#)
 169 631.
 170 (3) The record described in Subsection (2) shall include:
 171 (a) an agency record identifier;
 172 (b) the individual's name, sex, race, and date of birth; and
 173 (c) the individual's social security number, government issued driver license or
 174 identification number, alien registration number, government passport number, state
 175 identification number, or FBI number.
 176 Section 4. Section **53-10-213** is enacted to read:
 177 **53-10-213. Reporting Requirements.**
 178 (1) The bureau shall submit the record received from the court in accordance with
 179 Subsection [78B-7-106\(5\)\(e\)](#) to the National Crime Information Center within 48 hours of
 180 receipt, excluding Saturdays, Sundays, and legal holidays.
 181 (2) The bureau shall submit the record received from the court in accordance with
 182 Subsection [53-10-208.1\(2\)](#) to the National Instant Criminal Background Check System within

183 48 hours of receipt, excluding Saturdays, Sundays, and legal holidays.

184 Section 5. Section **78B-7-106** is amended to read:

185 **78B-7-106. Protective orders -- Ex parte protective orders -- Modification of**
186 **orders -- Service of process -- Duties of the court.**

187 (1) If it appears from a petition for an order for protection or a petition to modify an
188 order for protection that domestic violence or abuse has occurred, that there is a substantial
189 likelihood domestic violence or abuse will occur, or that a modification of an order for
190 protection is required, a court may:

191 (a) without notice, immediately issue an order for protection ex parte or modify an
192 order for protection ex parte as it considers necessary to protect the petitioner and all parties
193 named to be protected in the petition; or

194 (b) upon notice, issue an order for protection or modify an order after a hearing,
195 regardless of whether the respondent appears.

196 (2) A court may grant the following relief without notice in an order for protection or a
197 modification issued ex parte:

198 (a) enjoin the respondent from threatening to commit domestic violence or abuse,
199 committing domestic violence or abuse, or harassing the petitioner or any designated family or
200 household member;

201 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
202 with the petitioner or any designated family or household member, directly or indirectly, with
203 the exception of any parent-time provisions in the ex parte order;

204 (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified
205 distance of the petitioner;

206 (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to
207 stay away from the following places and their premises:

208 (i) the petitioner's residence or any designated family or household member's residence;

209 (ii) the petitioner's school or any designated family or household member's school;

210 (iii) the petitioner's or any designated family or household member's place of
211 employment;

212 (iv) the petitioner's place of worship or any designated family or household member's
213 place of worship; or

214 (v) any specified place frequented by the petitioner or any designated family or
215 household member;

216 (e) if the petitioner or designated family or household member attends the same school
217 as the respondent, is employed at the same place of employment as the respondent, or attends
218 the same place of worship, the court:

219 (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent
220 from the respondent's school, place of employment, or place of worship; and

221 (ii) may enter an order governing the respondent's conduct at the respondent's school,
222 place of employment, or place of worship;

223 (f) upon finding that the respondent's use or possession of a weapon may pose a serious
224 threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a
225 firearm or other weapon specified by the court;

226 (g) order possession and use of an automobile and other essential personal effects, and
227 direct the appropriate law enforcement officer to accompany the petitioner to the residence of
228 the parties to ensure that the petitioner is safely restored to possession of the residence,
229 automobile, and other essential personal effects, or to supervise the petitioner's or respondent's
230 removal of personal belongings;

231 (h) order the respondent to maintain an existing wireless telephone contract or account;

232 (i) grant to the petitioner or someone other than the respondent temporary custody of a
233 minor child of the parties;

234 (j) order the appointment of an attorney guardian ad litem under Sections [78A-2-703](#)
235 and [78A-6-902](#);

236 (k) order any further relief that the court considers necessary to provide for the safety
237 and welfare of the petitioner and any designated family or household member; and

238 (l) if the petition requests child support or spousal support, at the hearing on the
239 petition order both parties to provide verification of current income, including year-to-date pay
240 stubs or employer statements of year-to-date or other period of earnings, as specified by the
241 court, and complete copies of tax returns from at least the most recent year.

242 (3) A court may grant the following relief in an order for protection or a modification
243 of an order after notice and hearing, regardless of whether the respondent appears:

244 (a) grant the relief described in Subsection (2); and

245 (b) specify arrangements for parent-time of any minor child by the respondent and
246 require supervision of that parent-time by a third party or deny parent-time if necessary to
247 protect the safety of the petitioner or child.

248 (4) In addition to the relief granted under Subsection (3), the court may order the
249 transfer of a wireless telephone number in accordance with Section 77-36-5.3.

250 (5) Following the protective order hearing, the court shall:

251 (a) as soon as possible, deliver the order to the county sheriff for service of process;

252 (b) make reasonable efforts to ensure that the order for protection is understood by the
253 petitioner, and the respondent, if present;

254 (c) transmit electronically, by the end of the next business day after the order is issued,
255 a copy of the order for protection to the local law enforcement agency or agencies designated
256 by the petitioner; ~~and~~

257 (d) transmit a copy of the order to the statewide domestic violence network described
258 in Section 78B-7-113[-]; and

259 (e) if the individual is a respondent or defendant subject to a court order that meets the
260 qualifications outlined in 18 U.S.C. Sec. 922(g)(8), transmit within 48 hours, excluding
261 Saturdays, Sundays, and legal holidays, a record of the order to the Bureau of Criminal
262 Identification that includes:

263 (i) an agency record identifier;

264 (ii) the individual's name, sex, race, and date of birth;

265 (iii) the issue date, conditions, and expiration date for the protective order; and

266 (iv) if available, the individual's social security number, government issued driver
267 license or identification number, alien registration number, government passport number, state
268 identification number, or FBI number.

269 (6) (a) Each protective order shall include two separate portions, one for provisions, the
270 violation of which are criminal offenses, and one for provisions, the violation of which are civil
271 violations, as follows:

272 (i) criminal offenses are those under Subsections (2)(a) through (e), and under
273 Subsection (3)(a) as it refers to Subsections (2)(a) through (e); and

274 (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a)
275 as it refers to Subsections (2)(f), (h), and (i).

276 (b) The criminal provision portion shall include a statement that violation of any
277 criminal provision is a class A misdemeanor.

278 (c) The civil provision portion shall include a notice that violation of or failure to
279 comply with a civil provision is subject to contempt proceedings.

280 (7) The protective order shall include:

281 (a) a designation of a specific date, determined by the court, when the civil portion of
282 the protective order either expires or is scheduled for review by the court, which date may not
283 exceed 150 days after the date the order is issued, unless the court indicates on the record the
284 reason for setting a date beyond 150 days;

285 (b) information the petitioner is able to provide to facilitate identification of the
286 respondent, such as social security number, driver license number, date of birth, address,
287 telephone number, and physical description; and

288 (c) a statement advising the petitioner that:

289 (i) after two years from the date of issuance of the protective order, a hearing may be
290 held to dismiss the criminal portion of the protective order;

291 (ii) the petitioner should, within the 30 days prior to the end of the two-year period,
292 advise the court of the petitioner's current address for notice of any hearing; and

293 (iii) the address provided by the petitioner will not be made available to the respondent.

294 (8) Child support and spouse support orders issued as part of a protective order are
295 subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income
296 Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non
297 IV-D Cases, except when the protective order is issued ex parte.

298 (9) (a) The county sheriff that receives the order from the court, pursuant to Subsection
299 (6)(a), shall provide expedited service for orders for protection issued in accordance with this
300 chapter, and shall transmit verification of service of process, when the order has been served, to
301 the statewide domestic violence network described in Section [78B-7-113](#).

302 (b) This section does not prohibit any law enforcement agency from providing service
303 of process if that law enforcement agency:

304 (i) has contact with the respondent and service by that law enforcement agency is
305 possible; or

306 (ii) determines that under the circumstances, providing service of process on the

307 respondent is in the best interests of the petitioner.

308 (10) (a) When an order is served on a respondent in a jail or other holding facility, the
309 law enforcement agency managing the facility shall make a reasonable effort to provide notice
310 to the petitioner at the time the respondent is released from incarceration.

311 (b) Notification of the petitioner shall consist of a good faith reasonable effort to
312 provide notification, including mailing a copy of the notification to the last-known address of
313 the victim.

314 (11) A court may modify or vacate an order of protection or any provisions in the order
315 after notice and hearing, except that the criminal provisions of a protective order may not be
316 vacated within two years of issuance unless the petitioner:

317 (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah
318 Rules of Civil Procedure, and the petitioner personally appears, in person or through court
319 video conferencing, before the court and gives specific consent to the vacation of the criminal
320 provisions of the protective order; or

321 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
322 provisions of the protective order.

323 (12) A protective order may be modified without a showing of substantial and material
324 change in circumstances.

325 (13) Insofar as the provisions of this chapter are more specific than the Utah Rules of
326 Civil Procedure, regarding protective orders, the provisions of this chapter govern.