Office of Utah for Rational Sex Offense Laws

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Representative Rep. Ariel Defay
Utah House of Representatives
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Via email: adefay@le.utah.gov

Position Statement on H.B. 289 Child Sexual Abuse Material Amendments

Representative Ariel Defay,

Utah for Rational Sex Offense Laws (UTRSOL) recognizes the serious public safety concerns posed by AI-generated images depicting minors in sexually explicit contexts. We support the Legislature's intent to address this emerging threat and acknowledge that HB 0289 represents a necessary response to technological developments that have created new vulnerabilities for children.

However, UTRSOL expresses significant concerns regarding the bill's expansion of Utah's sex offender registry through the addition of three new registrable offenses.

Concerns Regarding Registry Expansion

Pace of Registry Growth

Since 2017, Utah has added 12 offenses to the registrable list. H.B. 289 would increase this total to 15 new offenses within a nine-year period, bringing the total number of enumerated registrable statutes to 45. This rapid expansion raises questions about the registry's continued effectiveness as a targeted public safety tool.

While we understand that technological evolution requires legal adaptation, UTRSOL urges the Legislature to consider whether every offense related to AI-generated imagery necessarily warrants registry consequences, particularly given the varying degrees of culpability and risk presented by different scenarios. If registration is required, Utah law provides only two statutory registration periods: 10 years or 20 years, depending on the offense classification. Absent explicit legislative direction assigning a new offense to the 10-year category, such offenses are typically treated as 20-year registerable offenses, further expanding the longest registration term rather than the shorter one.

Definitional Nuances Requiring Further Clarification

The bill's definition of "apparent child sexual abuse material" includes material that "depicts, or appears to depict, a realistic minor." Several aspects of this definition require further legislative consideration:

- What constitutes "realistic" in the context of rapidly evolving AI technology?
- How will prosecutors and courts distinguish between intentional creation/possession and inadvertent receipt in online contexts?
- Does the current language adequately differentiate between commercial distribution and peer-to-peer sharing among minors themselves?
- Are there scenarios involving young adults (18-21) creating or sharing AI-generated images where registry placement may be disproportionate to the actual harm or risk posed?

Non-Sexual Offenses on the Sex Offender Registry

UTRSOL continues to advocate for a registry that maintains clear nexus between listed offenses and sexual harm to actual victims. Currently, Utah's registry includes a number of offenses that do not contain an inherent sexual element or that do not involve actual children. Expanding the registry to include additional non-contact or non-sexual offenses risks diluting its purpose and undermining its credibility as a public safety tool. A more narrowly tailored registry would better align with evidence-based policy and focus limited resources on conduct that demonstrably presents sexual harm risks.

The addition of offenses involving entirely AI-generated imagery—while serious—further distances portions of the registry from its core purpose of tracking individuals who have demonstrated dangerous sexual behavior toward actual children. This mission creep may ultimately undermine public confidence in and effective use of the registry.

UTRSOL respectfully recommends the following modifications to H.B. 289:

1. Tiered Registration Requirements: Consider establishing different registration lengths based on the volume, nature, and distribution of material involved, rather than uniform lifetime registration for all AI-generated CSAM offenses. A tiered approach would allow courts to distinguish between markedly different levels of culpability and risk, promoting proportionality while preserving accountability

2. Mens Rea Clarification: Strengthen mental state requirements to ensure that accidental receipt, possession due to technological quirks (auto-downloads, pop-ups), or unwitting exposure are not captured by these statutes, thereby safeguarding against criminal liability and lifelong consequences in the absence of knowing or intentional conduct.

3. Age Proximity Provisions: Create specific carve-outs or reduced penalties for cases involving young adults (under 21) where the AI-generated images depict individuals close to their own age and no actual children were harmed or exploited.

4. Comprehensive Registry Review: Concurrent with this bill's consideration, UTRSOL urges the Legislature to commission a comprehensive review of Utah's sex offender registry to:

- Evaluate which offenses truly require registry placement
- Assess whether registration lengths are appropriately calibrated to risk
- Remove offenses that lack a sexual element or victim
- Examine recidivism data to ensure evidence-based policy

5. Sunset or Review Provision: Include a mandatory legislative review of these provisions in 3-5 years to assess their effectiveness, unintended consequences, and whether the definitions remain technologically appropriate.

Conclusion

Public safety must remain our paramount concern when evaluating sex offense legislation. UTRSOL recognizes that AI-generated child sexual abuse material represents a real and evolving threat that demands a legislative response.

However, we urge careful consideration of whether every aspect of this threat requires the most severe consequence available—placement on a public registry with lifetime consequences for employment, housing, and community reintegration. A registry burdened with individuals who pose minimal risk to children, or who were themselves young when they committed offenses involving no actual child victims, may ultimately be less effective at protecting Utah's children than a more targeted, evidence-based approach.

UTRSOL stands ready to work with the Legislature, law enforcement, prosecutors, and child advocacy organizations to refine H.B. 289 in a manner that protects children from emerging technological threats while ensuring that Utah's sex offender registry remains a credible, effective public safety tool.

Sincerely

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