

**SEXUAL OFFENSE AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Brent H. Goodfellow**

AN ACT RELATING TO CRIMINAL LAW; AMENDING ELEMENTS AND DESCRIPTIONS OF CERTAIN CRIMES INVOLVING SEXUAL OFFENSES; AND MAKING CORRESPONDING TECHNICAL AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**31A-21-501**, as enacted by Chapter 132, Laws of Utah 1997

**53-10-403**, as renumbered and amended by Chapter 263, Laws of Utah 1998

**76-2-304.5**, as last amended by Chapter 137, Laws of Utah 1996

**76-5-407**, as last amended by Chapter 137, Laws of Utah 1996

**76-9-301.8**, as last amended by Chapter 12, Laws of Utah 1994

**76-9-702**, as last amended by Chapter 137, Laws of Utah 1996

**76-9-702.5**, as last amended by Chapter 107, Laws of Utah 1996

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

Section 1. Section **31A-21-501** is amended to read:

**31A-21-501. Definitions.**

For purposes of this part:

(1) "Applicant" means:

(a) in the case of an individual life or disability policy, the person who seeks to contract for insurance benefits; or

(b) in the case of a group life or disability policy, the proposed certificate holder.

(2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an individual who is 16 years of age or older who:

(a) is or was a spouse of the other party;

(b) is or was living as if a spouse of the other party;

(c) is related by blood or marriage to the other party;

- (d) has one or more children in common with the other party; or
- (e) resides or has resided in the same residence as the other party.

(3) "Child abuse" means the commission or attempt to commit against a child a criminal offense described in:

- (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;
- (b) Title 76, Chapter 5, Part 4, Sexual Offenses;
- (c) ~~[Section]~~ Subsections 76-9-702(1) through (4), Lewdness-~~[Gross Lewdness]~~ Sexual battery; or

(d) Section 76-9-702.5, Lewdness Involving a Child.

(4) "Domestic violence" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another and includes commission or attempt to commit, any of the following offenses by one cohabitant against another:

- (a) aggravated assault, as described in Section 76-5-103;
- (b) assault, as described in Section 76-5-102;
- (c) criminal homicide, as described in Section 76-5-201;
- (d) harassment, as described in Section 76-5-106;
- (e) telephone harassment, as described in Section 76-9-201;
- (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
- (g) mayhem, as described in Section 76-5-105;
- (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter 5a;
- (i) stalking, as described in Section 76-5-106.5;
- (j) unlawful detention, as described in Section 76-5-304;
- (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
- (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;

(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;

or

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508.

(5) "Subject of domestic abuse" means an individual who is, has been, may currently be, or may have been subject to domestic violence or child abuse.

Section 2. Section **53-10-403** is amended to read:

**53-10-403. Blood analysis -- Application to offenders.**

Sections 53-10-404, 53-10-405, and 53-10-406 apply to any person convicted of any of the following offenses:

(1) unlawful sexual [intercourse] activity with minor, sexual abuse of a minor, unlawful sexual conduct with a 16 or 17 year old, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy of a child, forcible sexual abuse, sexual abuse of a child or aggravated sexual abuse of a child, aggravated sexual assault, sexual abuse without consent of the victim, incest, sexual exploitation of a minor; or

(2) murder or aggravated murder.

Section 3. Section **76-2-304.5** is amended to read:

**76-2-304.5. Mistake as to victim's age not a defense.**

(1) It is not a defense to the crime of child kidnaping, a violation of Section 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section 76-5-403.1; or sexual abuse of a child, a violation of Section 76-5-404.1; or aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(3); or an attempt to commit any of those offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(2) It is not a defense to the crime of unlawful sexual [intercourse] activity with a minor, a violation of Section 76-5-401, sexual abuse of a minor, a violation of Section 76-5-401.1, or an attempt to commit [~~that crime~~] either of these offenses, that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true

age.

Section 4. Section **76-5-407** is amended to read:

**76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to constitute offense.**

(1) The provisions of this part do not apply to consensual conduct between persons married to each other.

(2) In any prosecution for:

(a) the following offenses, any sexual penetration, however slight, is sufficient to constitute the relevant element of the offense:

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

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Subsection 76-5-401.2, involving sexual intercourse[-]; or

(iii) rape, [~~rape of a child, object rape of a child, sodomy, or forcible sodomy, any sexual penetration or, in the case of~~] a violation of Section 76-5-402; or

(b) the following offenses, any touching, however slight, is sufficient to constitute the relevant element of the offense:

(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving acts of sodomy or object penetration;

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section 76-5-401.2, involving acts of sodomy or object penetration;

(iii) sodomy, a violation of Subsection 76-5-403(1);

(iv) forcible sodomy, a violation of Subsection 76-5-403(2);

(v) rape of a child, a violation of Section 76-5-402.1; or

(vi) object rape of a child [~~any touching, however slight, is sufficient to constitute the relevant element of the offense~~], a violation of Section 76-5-402.3.

(3) In any prosecution for the following offenses, any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of the offense:

(a) sodomy on a child, a violation of Section 76-5-403.1; or  
(b) sexual abuse of a child~~;~~ or aggravated sexual abuse of a child [~~any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of the offense~~], a violation of Section 76-5-404.1.

Section 5. Section **76-9-301.8** is amended to read:

**76-9-301.8. Bestiality -- Definitions -- Penalty.**

(1) A person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor.

(2) For purposes of this section only:

(a) [~~"animal"~~] "Animal" means any live, nonhuman vertebrate creature, including fowl~~;~~and].

(b) [~~"sexual"~~] "Sexual activity" means physical sexual contact:

(i) between the actor and the animal involving the genitals of the actor [~~or~~] and the genitals of the animal;

(ii) the genitals of the actor or the animal and the mouth or anus of the actor or the animal;

or

[~~(ii)~~] (iii) through the actor's use of an object in contact with the genitals or anus of the animal.

(3) A crime of bestiality is a class B misdemeanor.

Section 6. Section **76-9-702** is amended to read:

**76-9-702. Lewdness -- Sexual battery -- Public urination.**

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

(a) an act of sexual intercourse or sodomy~~;~~;

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

(c) masturbates[;];  
 (d) engages in trespassory voyeurism[;]; or [performs]  
 (e) any other act of lewdness [in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older].

(2) Lewdness is a class B misdemeanor.

(3) A person is guilty of [~~gross lewdness~~] sexual battery if the person under circumstances not amounting to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated sexual assault, or an attempt to commit any of these offenses intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female, and the actor's conduct is under circumstances the [person] actor knows or should know will likely cause affront or alarm to the person touched.

(4) [~~Gross lewdness~~] Sexual battery is a class A misdemeanor.

(5) A person is guilty of public urination if the person urinates or defecates:

(a) in a public place, other than a public rest room; and

(b) under circumstances which the person should know will likely cause affront or alarm to another.

(6) Public urination is a class C misdemeanor.

[(5)] (7) 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 or grossly lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Section 7. Section **76-9-702.5** is amended to read:

**76-9-702.5. Lewdness involving child.**

(1) A person is guilty of lewdness involving a child if the person under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following to, or in the presence of a child who is under 14 years of age:

- (a) performs an act of sexual intercourse or sodomy;
  - (b) exposes his or her genitals [~~or private parts~~], the female breast below the top of the areola, the buttocks, the anus, or the pubic area:
    - (i) in a public place; or
    - (ii) in a private place:
      - (A) under circumstances the person should know will likely cause affront or alarm; or
      - (B) with the intent to arouse or gratify the sexual desire of the actor or the child;
  - (c) masturbates;
  - (d) engages in trespassory voyeurism;
  - (e) under circumstances not amounting to sexual exploitation of a child under Section 76-5a-3, causes a child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or
  - (f) performs any other act of lewdness.
- (2) Lewdness involving a child is a class A misdemeanor.