

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

30 (2) In any prosecution for:

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

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

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

37 (iii) rape, a violation of Section 76-5-402; or

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

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

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

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

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

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

47 (vi) object rape of a child, a violation of Section 76-5-402.3.

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

50 (a) sodomy on a child, a violation of Section 76-5-403.1; or

51 (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section
52 76-5-404.1.

53 Section 3. Section **76-5a-3** is amended to read:

54 **76-5a-3. Sexual exploitation of a minor -- Offenses.**

55 (1) A person is guilty of sexual exploitation of a minor:

56 (a) [~~When~~] when he knowingly produces, distributes, possesses, or possesses with intent
57 to distribute, material or a live performance depicting:

58 (i) a nude or partially nude minor for the purpose of causing sexual arousal of any person;

59 or

60 (ii) any [person's] minor's engagement in sexual conduct [~~with the minor.~~] alone or with
61 another person; or

62 (b) [Hf] if he is a minor's parent or legal guardian and knowingly consents to or permits that
63 minor to be sexually exploited under Subsection (1)(a) above.

64 (2) Sexual exploitation of a minor is a felony of the second degree.

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

66 (a) for each minor depicted, and if more than one minor is depicted in the same material
67 or live performance in violation of this section, the depiction of each individual minor in the
68 material or live performance is a separate offense;

69 (b) each time the same minor is depicted in different material; and

70 (c) each time the same minor is depicted in a separate live performance.

71 Section 4. Section **76-9-702** is amended to read:

72 **76-9-702. Lewdness -- Sexual battery -- Public urination.**

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

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

79 (b) exposes his or her genitals, the female breast below the top of the areola, the buttocks,
80 the anus, or the pubic area;

81 (c) masturbates;

82 (d) engages in trespassory voyeurism; or

83 (e) any other act of lewdness.

84 (2) Lewdness is a class B misdemeanor.

85 (3) A person is guilty of sexual battery if the person under circumstances not amounting
86 to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child,
87 forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated
88 sexual assault, or an attempt to commit any of these offenses intentionally touches, whether or not
89 through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of

90 a female, and the actor's conduct is under circumstances the actor knows or should know will likely
91 cause affront or alarm to the person touched.

92 (4) Sexual battery is a class A misdemeanor.

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

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

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

97 (6) Public urination is a class C misdemeanor.

98 (7) A woman's breast feeding, including breast feeding in any location where the woman
99 otherwise may rightfully be, does not under any circumstance constitute a lewd or grossly lewd act,
100 irrespective of whether or not the breast is covered during or incidental to feeding.

Legislative Review Note
as of 1-7-00 5:05 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel