

INCEST AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Wayne A. Harper

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LONG TITLE

General Description:

This bill amends the Criminal Code regarding the offense of incest.

Highlighted Provisions:

This bill:

- ▶ amends the definition of the crime of incest; and
- ▶ increases the statute of limitations for prosecution from four to eight years, and requires the crime be reported within four years after it occurs.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

**76-1-302**, as last amended by Laws of Utah 2008, Chapter 129

**76-7-102**, as enacted by Laws of Utah 1973, Chapter 196

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

Section 1. Section **76-1-302** is amended to read:

**76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA evidence would identify the defendant -- Commencement of prosecution.**

(1) Except as otherwise provided, a prosecution for:

(a) a felony or negligent homicide shall be commenced within four years after it is

30 committed, except that prosecution for:

31 (i) forcible sexual abuse shall be commenced within eight years after the offense is  
32 committed, if within four years after its commission the offense is reported to a law  
33 enforcement agency; and

34 (ii) incest shall be commenced within eight years after the offense is committed, if  
35 within four years after its commission the offense is reported to a law enforcement agency;

36 (b) a misdemeanor other than negligent homicide shall be commenced within two  
37 years after it is committed; and

38 (c) any infraction shall be commenced within one year after it is committed.

39 (2) (a) Notwithstanding Subsection (1), prosecution for the offenses listed in  
40 Subsections 76-3-203.5(1)(c)(i)(A) through (AA) may be commenced at any time if the  
41 identity of the person who committed the crime is unknown but DNA evidence is collected  
42 that would identify the person at a later date.

43 (b) Subsection (2)(a) does not apply if the statute of limitations on a crime has run as  
44 of May 5, 2003, and no charges have been filed.

45 (3) If the statute of limitations would have run but for the provisions of Subsection (2)  
46 and identification of a perpetrator is made through DNA, a prosecution shall be commenced  
47 within one year of the discovery of the identity of the perpetrator.

48 (4) A prosecution is commenced upon the finding and filing of an indictment by a  
49 grand jury or upon the filing of a complaint or information.

50 Section 2. Section **76-7-102** is amended to read:

51 **76-7-102. Incest -- Definitions -- Penalty.**

52 (1) As used in this section:

53 (a) "Provider" means a person who provides or makes available his seminal fluid or  
54 her human egg.

55 (b) "Related person" means a person related to the provider or actor as an ancestor,  
56 descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin, and includes:

57 (i) blood relationships of the whole or half blood without regard to legitimacy;

58 (ii) the relationship of parent and child by adoption; and  
59 (iii) the relationship of stepparent and stepchild while the marriage creating the  
60 relationship of a stepparent and stepchild exists.

61 [~~(1) A person~~] (2) (a) An actor is guilty of incest when, under circumstances not  
62 amounting to rape, rape of a child, or aggravated sexual assault, [he has sexual intercourse  
63 with a person whom he knows to be an ancestor, descendant, brother, sister, uncle, aunt,  
64 nephew, niece, or first cousin. The relationships referred to herein include blood relationships  
65 of the whole or half blood without regard to legitimacy, relationship of parent and child by  
66 adoption, and relationship of stepparent and stepchild while the marriage creating the  
67 relationship of a stepparent and stepchild exists:] the actor knowingly and intentionally:

68 (i) engages in conduct under Subsection (2)(b)(i), (ii), (iii), or (iv); or

69 (ii) provides a human egg or seminal fluid under Subsection (2)(b)(v).

70 (b) Conduct referred to under Subsection (2)(a) is:

71 (i) sexual intercourse between the actor and a person the actor knows has kinship to  
72 the actor as a related person;

73 (ii) the insertion or placement of the provider's seminal fluid into the vagina, cervix, or  
74 uterus of a related person by means other than sexual intercourse;

75 (iii) providing or making available his seminal fluid for the purpose of insertion or  
76 placement of the fluid into the vagina, cervix, or uterus of a related person by means other than  
77 sexual intercourse;

78 (iv) a woman 18 years of age or older who:

79 (A) knowingly allows the insertion of the seminal fluid of a provider into her vagina,  
80 cervix, or uterus by means other than sexual intercourse; and

81 (B) knows that the seminal fluid is that of a person with whom she has kinship as a  
82 related person; or

83 (v) providing the actor's sperm or human egg that is used to conduct in vitro  
84 fertilization, or any other means of fertilization, with the human egg or sperm of a person who  
85 is a related person.

86 (c) This Subsection (2) does not prohibit providing a fertilized human egg if the  
87 provider of the fertilizing sperm is not a related person regarding the person providing the egg.

88 [~~2~~] (3) Incest is a third degree felony [~~of the third degree~~].

89 (4) A provider under this section is not a donor under Section 78B-15-702.

90 Section 3. **Effective date.**

91 If approved by two-thirds of all the members elected to each house, this bill takes effect  
92 upon approval by the governor, or the day following the constitutional time limit of Utah  
93 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
94 the date of veto override.