

SEXUAL OFFENSE AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Brent H. Goodfellow

AN ACT RELATING TO CRIMINAL LAW; AMENDING ELEMENTS OF SPECIFIED SEXUAL OFFENSES, INCLUDING CERTAIN OFFENSES AGAINST MINORS AND THE OFFENSE OF LEWDNESS.

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

AMENDS:

76-5-402.3, as last amended by Chapter 40, Laws of Utah 1996

76-5-407, as last amended by Chapter 302, Laws of Utah 1999

76-5a-3, as last amended by Chapter 226, Laws of Utah 1985

76-9-702, as last amended by Chapter 302, Laws of Utah 1999

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

Section 1. Section **76-5-402.3** is amended to read:

76-5-402.3. Object rape of a child -- Penalty.

(1) A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.

(2) (a) Object rape of a child is a first degree felony punishable by imprisonment for an indeterminate term of not less than 6, 10, or 15 years and which may be for life.

(b) Imprisonment is mandatory in accordance with Section 76-3-406.

Section 2. 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, 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, 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, a violation of Section 76-5-404.1.

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

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

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

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

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

or

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

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

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

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

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

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

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

Section 4. 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 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:

(a) an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, 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

(e) any other act of lewdness.

(2) Lewdness is a class B misdemeanor.

(3) A person is guilty of 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 actor knows or should know will likely cause affront or alarm to the person touched.

(4) 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.

(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.