

**VOYEURISM AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Brent H. Goodfellow**

**This act modifies the Criminal Code by specifying the offense of voyeurism. This act provides the elements of the offense, levels of penalties, and exemptions.**

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

AMENDS:

**76-6-202**, as last amended by Chapter 4, Laws of Utah 2001, First Special Session

**76-9-702**, as last amended by Chapter 128, Laws of Utah 2000

**76-9-702.5**, as last amended by Chapter 302, Laws of Utah 1999

ENACTS:

**76-9-702.7**, Utah Code Annotated 1953

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

Section 1. Section **76-6-202** is amended to read:

**76-6-202. Burglary.**

(1) An actor is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit:

- (a) a felony;
- (b) theft;
- (c) an assault on any person;
- (d) lewdness, a violation of Subsection 76-9-702(1);
- (e) sexual battery, a violation of Subsection 76-9-702(3); ~~[or]~~
- (f) lewdness involving a child, in violation of Section 76-9-702.5~~[-];~~ or
- (g) voyeurism against a child under Subsection 76-9-702.7(2) or (5).

(2) Burglary is a felony of the third degree unless it was committed in a dwelling, in which event it is a felony of the second degree.

(3) A violation of this section is a separate offense from any of the offenses listed in Subsections (1)(a) through ~~[(f)]~~ (g), and which may be committed by the actor while he is in

the building.

Section 2. 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; or
- ~~[(d) engages in trespassory voyeurism; or]~~
- ~~[(e)]~~ (d) 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.

Section 3. Section **76-9-702.5** is amended to read:

**76-9-702.5. Lewdness involving a 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, 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)]~~ (d) 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)]~~ (e) performs any other act of lewdness.

(2) Lewdness involving a child is a class A misdemeanor.

Section 4. Section **76-9-702.7** is enacted to read:

**76-9-702.7. Voyeurism offense -- Penalties -- Exemptions.**

(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture

camera, photographic camera of any type, or other equipment that is concealed to secretly or surreptitiously videotape, film, photograph, or record by electronic means an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual;

(c) with the intent to invade the privacy of the individual; and

(d) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who intentionally uses a mirror or other reflective device that is concealed, a two-way mirror, a hole or opening, or any instrumentality to secretly or surreptitiously view an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual;

(c) with the intent to invade the privacy of the individual; and

(d) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.