

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.



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

31 Section 2. Section **76-9-702** is amended to read:

32 **76-9-702. Lewdness -- Sexual battery -- Public urination.**

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

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

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

41 (c) masturbates; or

42 ~~[(d) engages in trespassory voyeurism; or]~~

43 ~~[(e)]~~ (d) any other act of lewdness.

44 (2) Lewdness is a class B misdemeanor.

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

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

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

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

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

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

58 (7) A woman's breast feeding, including breast feeding in any location where the

59 woman otherwise may rightfully be, does not under any circumstance constitute a lewd or
 60 grossly lewd act, irrespective of whether or not the breast is covered during or incidental to
 61 feeding.

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

63 **76-9-702.5. Lewdness involving child.**

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

69 (a) performs an act of sexual intercourse or sodomy;

70 (b) exposes his or her genitals, the female breast below the top of the areola, the
 71 buttocks, the anus, or the pubic area:

72 (i) in a public place; or

73 (ii) in a private place:

74 (A) under circumstances the person should know will likely cause affront or alarm; or

75 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;

76 (c) masturbates;

77 [~~(d) engages in trespassory voyeurism;~~]

78 [~~(e)~~] (d) under circumstances not amounting to sexual exploitation of a child under
 79 Section 76-5a-3, causes a child under the age of 14 years to expose his or her genitals, anus, or
 80 breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor
 81 or the child; or

82 [~~(f)~~] (e) performs any other act of lewdness.

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

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

85 **76-9-702.7. Voyeurism offense -- Penalties -- Exemptions.**

86 (1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture
 87 camera, photographic camera of any type, or other equipment that is concealed or not
 88 reasonably visible to secretly or surreptitiously videotape, film, photograph, or record by
 89 electronic means an individual:

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

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

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

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

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

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

103 (4) A person is guilty voyeurism who intentionally uses a mirror or other reflective
104 device that is concealed or not reasonably visible, a two-way mirror, a hole or opening, or any
105 instrumentality to secretly or surreptitiously view an individual:

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

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

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

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

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

115 (6) This section does not apply to:

116 (a) investigative journalism conducted by a person employed by a public media entity
117 such as a newspaper, radio station, or television station and who is acting within the lawful
118 scope of his or her employment;

119 (b) governmental entities or their private contractors who are operating surveillance
120 cameras as part of the lawful functions of a correctional facility; or

121 (c) the operation of surveillance cameras by a private or governmental entity for the
122 sole purpose of deterring and preventing criminal activity in the entity's operation of any
123 business or facility.

Legislative Review Note
as of 2-25-03 9:42 AM

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

Office of Legislative Research and General Counsel

State Impact

The bill requires an appropriation of \$25,000 for FY 2004 and an ongoing appropriation of \$75,000 for FY 2005 from the General Fund to the Department of Corrections.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$25,000	\$75,000	\$0	\$0
TOTAL	\$25,000	\$75,000	\$0	\$0

Individual and Business Impact

No significant fiscal impact.
