

Representative Gregory H. Hughes proposes the following substitute bill:

SEX OFFENDER RESTRICTIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies the Code of Criminal Procedure to limit where persons may be if they are sex offenders against children and defines these restricted areas and places.

Highlighted Provisions:

This bill:

- ▶ increases the penalties for lewdness offenses committed by a sex offender; and
- ▶ restricts locations where offenders convicted of specified sex offenses may be, with certain exceptions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-9-702, as last amended by Chapter 325, Laws of Utah 2003

76-9-702.5, as last amended by Chapter 325, Laws of Utah 2003

ENACTS:

77-27-21.7, Utah Code Annotated 1953



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

Section 1. 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) any other act of lewdness.

(2) (a) Lewdness is a class B misdemeanor.

(b) Lewdness is a class A misdemeanor if the person is a sex offender as defined in Section 77-27-21.7.

(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

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

60 Section 2. Section **76-9-702.5** is amended to read:

61 **76-9-702.5. Lewdness involving a child.**

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

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

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

70 (i) in a public place; or

71 (ii) in a private place:

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

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

74 (c) masturbates;

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

79 (e) performs any other act of lewdness.

80 (2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection
 81 (2)(b).

82 (b) Lewdness involving a child is a third degree felony if the person is a sex offender as
 83 defined in Section 77-27-21.7.

84 Section 3. Section **77-27-21.7** is enacted to read:

85 **77-27-21.7. Sex Offender Restrictions.**

86 (1) As used in this section:

87 (a) "Protected area" means the premises ~~that~~ **→ [of] occupied by ← that** :

88 (i) any licensed day care or preschool facility;
 89 (ii) a swimming pool that is open to the public;
 90 (iii) a public or private primary or secondary school that is not on the grounds of a
 91 correctional facility;

92 ~~Ĥ→ [(iv) a trade school in which persons younger than 18 years of age enroll, and that is not~~
 93 ~~on the grounds of a correctional facility;]~~ ←Ĥ

94 ~~Ĥ→ [(v)] (iv)~~ ←Ĥ a community park that is open to the public; and

95 ~~Ĥ→ [(vi)] (v)~~ ←Ĥ a playground that is open to the public, including those areas designed
 95a to provide
 96 children space, recreational equipment, or other amenities intended to allow children to engage
 97 in physical activity.

97a ~~Ĥ→~~ **(b)(i) Except under Subsection (1)(b)(ii), "protected area" also includes any area that is**
 97b **1,000 feet or less from the residence of a victim of the sex offender's offense under Subsection**
 97c **(1)(c) if:**

97d **(A) the sex offender is on probation or parole for an offense under Subsection (1)(c);**

97e **(B) the victim or the victim's parent or guardian has advised the Department of**
 97f **Corrections that the victim desires that the sex offender be restricted from the area under this**
 97g **Subsection (1)(b)(i) and authorizes the Department of Corrections to advise the sex offender of**
 97h **the area where the victim resides for purposes of this Subsection (1)(b); and**

97i **(C) the Department of Corrections has notified the sex offender in writing that the sex**
 97j **offender is prohibited from being in the protected area under Subsection (1)(b)(i) and has also**
 97k **provided a description of the location of the protected area to the sex offender.**

97l **(ii) "Protected area" under Subsection (1)(b)(i) does not apply to the residence and area**
 97m **surrounding the residence of a victim if:**

97n **(A) the victim is a member of the immediate family of the sex offender; and**

97o **(B) the terms of the sex offender's agreement of probation or parole allow the sex**
 97p **offender to reside in the same residence as the victim.**

98 ~~[(b)] (c)~~ ←Ĥ "Sex offender" means an adult or juvenile ~~Ĥ→~~ **who is required to**
 98a2 **register** ←Ĥ ~~under~~ ~~Ĥ→~~ **[Subsection**

98a1 **77-27-21.5(2)(f)]**

98a **[Subsection 77-27-21.5(1)(f)] Section 77-27-21.5** ←Ĥ due to

99 a conviction for any offense ~~Ĥ→~~ **[listed under Subsection 77-27-21.5(1)(f)]** ←Ĥ that is committed
 99a against

100 a person younger than 18 years of age.

101 **(2) It is a class A misdemeanor for any sex offender to be in any protected area on foot**

102 or in or on any vehicle, including vehicles that are not motorized, except for ~~H~~→ :

102a (a) ←H those specific

103 periods of time when the sex offender must be present within a protected area in order to carry

104 out necessary parental responsibilities ~~H~~→ [] ;

104a (b) when the protected area is:

104b (i) a school building under Subsection (1)(a)(iii); and

104c (ii) the school building is being open for or being used for a public activity; and

104d (iii) the school building is not being used for any school-related function that involves

104e persons younger than 18 years of age; or

104f (c) when the protected area is:

104g (i) a licensed day care or preschool facility under Subsection (1)(a)(i); and

104h (ii) the facility is located within a building that is open to the public for purposes,

104i services, or functions that are operated separately from the day care or preschool facility

104j located in the building, except that the sex offender may not be in any part of the building

104k occupied by the day care or preschool facility. ←H

H.B. 375 1st Sub. (Buff) - Sex Offender Restrictions

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will require an additional ongoing appropriation of \$23,600 from the General Fund to the Department of Corrections due to an estimated increase of offenses resulting from provisions in this bill.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
General Fund	\$0	\$23,600	\$23,600	\$0	\$0	\$0
Total	\$0	\$23,600	\$23,600	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.