

**SEX OFFENDER RESTRICTIONS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory H. Hughes**

Senate Sponsor: Margaret Dayton

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**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. This bill also amends lewdness provisions.

**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:

30           **76-9-702. Lewdness -- Sexual battery -- Public urination.**

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

- 36           (a) an act of sexual intercourse or sodomy;
- 37           (b) exposes his or her genitals, the female breast below the top of the areola, the  
38 buttocks, the anus, or the pubic area;
- 39           (c) masturbates; or
- 40           (d) any other act of lewdness.

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

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

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

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

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

- 53           (a) in a public place, other than a public rest room; and
- 54           (b) under circumstances which the person should know will likely cause affront or  
55 alarm to another.

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

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

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

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

62 **76-9-702.5. Lewdness involving a child.**

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

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

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

71 (i) in a public place; or

72 (ii) in a private place:

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

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

75 (c) masturbates;

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

80 (e) performs any other act of lewdness.

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

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

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

86 77-27-21.7. Sex offender restrictions.

87 (1) As used in this section:

88 (a) "Protected area" means the premises occupied by:

89 (i) any licensed day care or preschool facility;

90 (ii) a swimming pool that is open to the public;

91 (iii) a public or private primary or secondary school that is not on the grounds of a  
92 correctional facility;

93 (iv) a community park that is open to the public; and

94 (v) a playground that is open to the public, including those areas designed to provide  
95 children space, recreational equipment, or other amenities intended to allow children to engage  
96 in physical activity.

97 (b) (i) Except under Subsection (1)(b)(ii), "protected area" also includes any area that is  
98 1,000 feet or less from the residence of a victim of the sex offender's offense under Subsection  
99 (1)(c) if:

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

101 (B) the victim or the victim's parent or guardian has advised the Department of  
102 Corrections that the victim desires that the sex offender be restricted from the area under this  
103 Subsection (1)(b)(i) and authorizes the Department of Corrections to advise the sex offender of  
104 the area where the victim resides for purposes of this Subsection (1)(b); and

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

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

110 (A) the victim is a member of the immediate family of the sex offender; and

111 (B) the terms of the sex offender's agreement of probation or parole allow the sex  
112 offender to reside in the same residence as the victim.

113 (c) "Sex offender" means an adult or juvenile who is required to register under Section

114 77-27-21.5 due to a conviction for any offense that is committed against a person younger than  
115 18 years of age.

116 (2) It is a class A misdemeanor for any sex offender to be in any protected area on foot  
117 or in or on any vehicle, including vehicles that are not motorized, except for:

118 (a) those specific periods of time when the sex offender must be present within a  
119 protected area in order to carry out necessary parental responsibilities;

120 (b) when the protected area is a school building:

121 (i) under Subsection (1)(a)(iii);

122 (ii) being opened for or being used for a public activity; and

123 (iii) not being used for any school-related function that involves persons younger than  
124 18 years of age; or

125 (c) when the protected area is a licensed day care or preschool facility:

126 (i) under Subsection (1)(a)(i); and

127 (ii) located within a building that is open to the public for purposes, services, or

128 functions that are operated separately from the day care or preschool facility located in the

129 building, except that the sex offender may not be in any part of the building occupied by the  
130 day care or preschool facility.