

PUBLIC LEWDNESS AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding penalties for repeat lewdness offenses.

Highlighted Provisions:

This bill:

▶ increases the penalty for lewdness if the offender has been convicted twice before of lewdness or lewdness involving a child; and

▶ increases the penalty for lewdness involving a child if the offender has been convicted once before of lewdness involving a child.

Monies Appropriated in this Bill:

None

Other Special Clauses:

⚡→ [None] This bill coordinates with H.B. 136, Sex Offender Definition Amendments, by providing that specified amendments in this bill supersede amendments in H.B. 136. ←⚡

Utah Code Sections Affected:

AMENDS:

76-9-702, as last amended by Laws of Utah 2007, Chapter 350

76-9-702.5, as last amended by Laws of Utah 2007, Chapter 350

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.



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

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

38 [~~(2) (a) Lewdness is a class B misdemeanor.~~]

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

41 (2) (a) A person convicted the first or second time of a violation of Subsection (1) is
42 guilty of a class B misdemeanor, except under Subsection (2)(b).

43 (b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony
44 if at the time of the violation:

- 45 (i) the person is a sex offender as defined in Section 77-27-21.7;
- 46 (ii) the person has been previously convicted two or more times of violating Subsection
47 (1); or
- 48 (iii) the person has previously been convicted of a violation of Subsection (1) and has
49 also previously been convicted of a violation of Section 76-9-702.5.

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

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

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

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

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

63 (7) A woman's breast feeding, including breast feeding in any location where the
64 woman otherwise may rightfully be, does not under any circumstance constitute a lewd [~~or~~
65 ~~grossly lewd~~] act, irrespective of whether or not the breast is covered during or incidental to
66 feeding.

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

68 **76-9-702.5. Lewdness involving a child.**

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

- 74 (a) performs an act of sexual intercourse or sodomy;
- 75 (b) exposes his or her genitals, the female breast below the top of the areola, the
76 buttocks, the anus, or the pubic area:

- 77 (i) in a public place; or
- 78 (ii) in a private place:

- 79 (A) under circumstances the person should know will likely cause affront or alarm; or
- 80 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;
- 81 (c) masturbates;

82 (d) under circumstances not amounting to sexual exploitation of a child under Section
83 76-5a-3, causes a child under the age of 14 years to expose his or her genitals, anus, or breast,
84 if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the
85 child; or

86 (e) performs any other act of lewdness.

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

89 (b) Lewdness involving a child is a third degree felony if at the time of the violation:

- 90 (i) the person is a sex offender as defined in Section 77-27-21.7[-]; or
- 91 (ii) the person has previously been convicted of a violation of this section.

91a **§→ Section 3. Coordinating H.B. 384 and H.B. 136 - Superseding amendments.**

91b **If this H.B. 384 and H.B. 136, Sex Offender Definition Amendments, both pass, it is the**
91c **intent of the Legislature that the amendments to Subsection 76-9-702(2) in this bill supersede**
91d **the amendments to Subsection 76-9-702(2) in H.B. 136 when the office of Legislative Research**
91e **and General Counsel prepares the Utah Code Database for publication.** ←§

Legislative Review Note
as of 2-12-09 10:20 AM

Office of Legislative Research and General Counsel

H.B. 384 - Public Lewdness Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will increase state revenues by \$6,800 beginning FY 2010. The Courts will require an ongoing General Fund appropriation of \$18,200 beginning FY 2010. The Department of Corrections will require General Fund appropriations of \$29,100 in FY 2011 and \$58,100 in FY 2012 and each fiscal year thereafter.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$18,200	\$76,300	\$0	\$6,800	\$6,800
General Fund, One-Time	\$0	\$0	(\$29,000)	\$0	\$0	\$0
Total	\$0	\$18,200	\$47,300	\$0	\$6,800	\$6,800

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals and businesses. Local governments will be impacted by additional incarceration costs.
