

CRIMINAL OFFENSE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the offenses of lewdness and sexual battery.

Highlighted Provisions:

This bill:

- ▶ revises the Criminal Code so that the offenses of lewdness, sexual battery, and public urination are each in a separate code section; and
- ▶ provides that a plea of guilty or no contest that is held in abeyance regarding a lewdness offense is the equivalent of a conviction.

Money Appropriated in this Bill:

None

Other Special Clauses:

H→ [None] This bill coordinates with H.B. 17 by providing technical amendments. ←H

Utah Code Sections Affected:

AMENDS:

31A-21-501, as last amended by Laws of Utah 2011, Chapter 320

76-6-202, as last amended by Laws of Utah 2011, Chapter 78

76-9-702, as last amended by Laws of Utah 2009, Chapters 354 and 366

77-27-21.5, as last amended by Laws of Utah 2011, Chapters 48, 320 and last amended by Coordination Clause, Laws of Utah 2011, Chapter 48

H.B. 282



28 78A-6-105, as last amended by Laws of Utah 2011, Chapter 320

29 ENACTS:

30 76-9-702.1, Utah Code Annotated 1953

31 76-9-702.3, Utah Code Annotated 1953

31a **§→ Utah Code Sections Affected by Coordination Clause:**

31b **77-27-21.5, as last amended by Laws of Utah 2011, Chapters 48, 320 and last amended**
 31c **by Coordination Clause, Laws of Utah 2011, Chapter 48**

31d **77-41-102, Utah Code Annotated 1953 ←§**

32

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

34 Section 1. Section 31A-21-501 is amended to read:

35 **31A-21-501. Definitions.**

36 For purposes of this part:

37 (1) "Applicant" means:

38 (a) in the case of an individual life or accident and health policy, the person who seeks
 39 to contract for insurance benefits; or

40 (b) in the case of a group life or accident and health policy, the proposed certificate
 41 holder.

42 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
 43 individual who is 16 years of age or older who:

44 (a) is or was a spouse of the other party;

45 (b) is or was living as if a spouse of the other party;

46 (c) is related by blood or marriage to the other party;

47 (d) has one or more children in common with the other party; or

48 (e) resides or has resided in the same residence as the other party.

49 (3) "Child abuse" means the commission or attempt to commit against a child a
 50 criminal offense described in:

51 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

52 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

53 [~~(c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or~~]

54 (c) Section 76-9-702, Lewdness;

55 (d) Section 76-9-702.1, Sexual battery; or

56 [~~(d)~~] (e) Section 76-9-702.5, Lewdness involving a child.

57 (4) "Domestic violence" means any criminal offense involving violence or physical
 58 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to

121 ~~aggravated sexual assault, or an attempt to commit any of these offenses intentionally touches,~~
 122 ~~whether or not through clothing, the anus, buttocks, or any part of the genitals of another~~
 123 ~~person, or the breast of a female, and the actor's conduct is under circumstances the actor~~
 124 ~~knows or should know will likely cause affront or alarm to the person touched.]~~

125 ~~[(4) Sexual battery is a class A misdemeanor.]~~

126 ~~[(5) A person is guilty of public urination if the person urinates or defecates:]~~

127 ~~[(a) in a public place, other than a public rest room; and]~~

128 ~~[(b) under circumstances which the person should know will likely cause affront or~~
 129 ~~alarm to another.]~~

130 ~~[(6) Public urination is a class C misdemeanor.]~~

131 ~~(c) \hat{H} → (i) $\leftarrow \hat{H}$ For purposes of this Subsection (2) \hat{H} → [only] and~~
 131a ~~Subsection 77-27-21.5(1)(n) $\leftarrow \hat{H}$, a plea of guilty or nolo contendere to a~~
 132 ~~charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in~~
 133 ~~Abeyance, is the equivalent of a conviction \hat{H} → .~~

133a ~~(ii) This Subsection (2)(c) also applies if the charge under this Subsection(2) has been~~
 133b ~~subsequently reduced or dismissed in accordance with the plea in abeyance agreement $\leftarrow \hat{H}$.~~

134 ~~\hat{H} → [(d) Subsection (2)(a) also applies if the charge has been subsequently reduced or~~
 135 ~~dismissed in accordance with the plea in abeyance agreement.] $\leftarrow \hat{H}$~~

136 ~~[(7) (3) A woman's breast feeding, including breast feeding in any location where the~~
 137 ~~woman otherwise may rightfully be, does not under any circumstance constitute a lewd act,~~
 138 ~~irrespective of whether or not the breast is covered during or incidental to feeding.~~

139 Section 4. Section **76-9-702.1** is enacted to read:

140 **76-9-702.1. Sexual battery.**

141 (1) A person is guilty of sexual battery if the person, under circumstances not
 142 amounting to an offense under Subsection (2), intentionally touches, whether or not through
 143 clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a
 144 female person, and the actor's conduct is under circumstances the actor knows or should know
 145 will likely cause affront or alarm to the person touched.

146 (2) Offenses referred to in Subsection (1) are:

147 (a) rape, Section 76-5-402;

148 (b) rape of a child, Section 76-5-402.1;

149 (c) object rape, Section 76-5-402.2;

150 (d) object rape of a child, Section 76-5-402.3;

151 (e) forcible sodomy, Subsection 76-5-403(2);

- 152 (f) sodomy on a child, Section 76-5-403.1;
 153 (g) forcible sexual abuse, Section 76-5-404;
 154 (h) sexual abuse of a child, Subsection 76-5-404.1(2);
 155 (i) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);
 156 (j) aggravated sexual assault, Section 76-5-405; and
 157 (k) an attempt to commit any offense under this Subsection (2).
 158 (3) Sexual battery is a class A misdemeanor.

158a **H→ (4) For purposes of Subsection 77-27-21.5(1)(n) only, a plea of guilty or nolo contendere**
 158b **to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in**
 158c **Abeyance, is the equivalent of a conviction . This Subsection (4) also applies if the charge**
 158d **under this section has been subsequently reduced or dismissed in accordance with the plea in**
 158e **abeyance agreement. ←H**

159 Section 5. Section **76-9-702.3** is enacted to read:

160 **76-9-702.3. Public urination.**

161 (1) A person is guilty of public urination if the person urinates or defecates:

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

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

165 (2) Public urination is a class C misdemeanor.

166 Section 6. Section **77-27-21.5** is amended to read:

167 **77-27-21.5. Sex and kidnap offenders -- Registration -- Information system --**
 168 **Law enforcement and courts to report -- Penalty -- Effect of expungement.**

169 (1) As used in this section:

170 (a) "Business day" means a day on which state offices are open for regular business.

171 (b) "Department" means the Department of Corrections.

172 (c) "Division" means the Division of Juvenile Justice Services.

173 (d) "Employed" or "carries on a vocation" includes employment that is full time or part
 174 time, whether financially compensated, volunteered, or for the purpose of government or
 175 educational benefit.

176 (e) "Indian Country" means:

177 (i) all land within the limits of any Indian reservation under the jurisdiction of the
 178 United States government, regardless of the issuance of any patent, and includes rights-of-way
 179 running through the reservation;

180 (ii) all dependent Indian communities within the borders of the United States whether
 181 within the original or subsequently acquired territory, and whether or not within the limits of a
 182 state; and

- 741 (i) pose in the nude for the purpose of sexual arousal of any person; or
 742 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
 743 filming, recording, or displaying in any way the sexual or simulated sexual conduct;
 744 (b) displaying, distributing, possessing for the purpose of distribution, or selling
 745 material depicting a child:
 746 (i) in the nude, for the purpose of sexual arousal of any person; or
 747 (ii) engaging in sexual or simulated sexual conduct; or
 748 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
 749 Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is
 750 actually charged with, or convicted of, the offense.

751 (37) "Shelter" means the temporary care of a child in a physically unrestricted facility
 752 pending court disposition or transfer to another jurisdiction.

753 (38) "State supervision" means a disposition that provides a more intensive level of
 754 intervention than standard probation but is less intensive or restrictive than a community
 755 placement with the Division of Juvenile Justice Services.

756 (39) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or
 757 substances.

758 (40) "Substantiated" is as defined in Section 62A-4a-101.

759 (41) "Supported" is as defined in Section 62A-4a-101.

760 (42) "Termination of parental rights" means the permanent elimination of all parental
 761 rights and duties, including residual parental rights and duties, by court order.

762 (43) "Therapist" means:

763 (a) a person employed by a state division or agency for the purpose of conducting
 764 psychological treatment and counseling of a minor in its custody; or

765 (b) any other person licensed or approved by the state for the purpose of conducting
 766 psychological treatment and counseling.

767 (44) "Unsubstantiated" is as defined in Section 62A-4a-101.

768 (45) "Without merit" is as defined in Section 62A-4a-101.

768a **H→ Section 8. Coordination clauses - Coordinating H.B. 282 and H.B. 17 -- Merging**
 768b **technical amendments.**

768c **If this H.B. 282 and HB 17, Sex Offender Registry Chapter, both pass and become law, the**
 768d **Legislature intends that:**

768e **(1) the cross-reference change in Subsection 77-27-21.5(1)(n)(i)(R) in this H.B. 282 be**
 768f **made to Subsection 77-41-102(14)(a)(xviii) in HB 17;**

768g **(2) the cross-reference change in Subsection 77-27-21.5(1)(n)(i)(S) in this H.B. 282 be**
768h **made to Subsection 77-41-102(14)(a)(xix) in HB 17;**
768i **(3) the cross-reference change in Subsection 77-27-21.5(1)(n)(i)(T) in this H.B. 282 be**
768j **made to Subsection 77-41-102(14)(a)(xx) in HB 17; and**
768k **(4) the Office of Legislative Research and General Counsel make these changes when**
768l **preparing the Utah Code database for publication. ←H**