

Suggested Changes to The North Carolina General Statues In Light of Lawrence v. Texas

(In accordance with North Carolina bill drafting practice, the existing text in the statutes cited below is shown in plain text. Proposed deletions are shown in “strike-through” format. Proposed additions are shown as underlined text.)

1. Redefining prostitution to include acts other than intercourse

Discussion: This change would add sex acts other than vaginal intercourse to the definition of prostitution. The purpose would be to outlaw the commercial and/or “indiscriminate” offering of sexual favors other than intercourse in the same manner as such offerings are already outlawed with regard to vaginal sex.

14-203 Definition of Terms

The term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse, **or the offering or receiving of the body for a sex act as defined by N.C.G.S. 14-27.1(4)** for hire, and shall also be construed to include the offering or receiving of the body for indiscriminate sexual intercourse **or indiscriminate sex acts** without hire. The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or any act in furtherance of such appointment or engagement.

[NOTE: N.C.G.S. 14-27.1(4) reads: "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.]

2. Rewriting the Indecent Exposure statute to include certain types of exposure by members of the same gender and to specifically prohibit public sexual acts.

Discussion: The proposed changes would do two things.

- 1) Make it possible to prosecute persons for same gender indecent exposure if the additional element of the specific intent to elicit or exhibit sexual excitement or arousal is present. The revision specifies that verbal statements, suggestive mannerisms and evidence of sexual arousal on the part of the defendant shall be admissible as evidence of intent, but the mere exposure of one's private parts in settings where such exposure is normal or anticipated,*

standing alone, shall be insufficient to establish willfulness or the intent to violate the statute. This particular provision may not be necessary but is included to give law enforcement a tool in the event that a blatantly sexual display of one's genitalia is presented in a public place when no commercial activity or actual sexual act takes place.

- 2) *Specifically make it unlawful to engage in sexual activity in a public place regardless of the nature of the act, the relationship of the parties or the gender of the actors. This provision is intended to replace the use to which some law enforcement agencies have been attempting to put N.C.G.S. 14-177.*

[Note, the definition of a "public place" under the indecent exposure statute has already been defined by the Courts in State v. King, 268 N.C. 711 (1966).

" `Public place' means a place which in point of fact is public as distinguished from private, but not necessarily a place devoted solely to the uses of the public, a place that is visited by many persons and to which the neighboring public may have resort, a place which is accessible to the public and visited by many persons. *Ellis v. Archer*, 161 N.W. 192; *People v. Lane*, 32 N.Y.S. 2d 61. A mercantile establishment and the premises thereof is a public place during business hours when customers are coming and going."]

14-190.9. Indecent exposure and public sexual acts.

- (a) Any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, of the opposite sex, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.
- (b) **Any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other persons or persons of the same gender with the specific intent to elicit or exhibit sexual excitement or arousal, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor. Verbal statements, suggestive mannerisms and evidence of sexual arousal on the part of the defendant shall be admissible evidence of intent, but the mere exposure of one's private parts in settings where such exposure is normal or anticipated, standing alone, shall be insufficient to**

establish willfulness or the intent to violate this statute.

(c) Any person who shall engage in sexual intercourse, masturbation or a sex act as defined in N.C.G.S. 27.1(4) in any public place and in the presence of any other persons or persons or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 1 misdemeanor. It shall not be a defense that the persons engaging in such acts shall be married to one another or otherwise entitled under the laws or Constitution of the United States of this state to engage in sexual relations in private non-public settings.

(b)(d) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

~~(e)~~(e) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech.

3. Either repealing the Crime Against Nature law or amending it to only cover sexual acts with animals

Discussion: The best course of action would be to repeal the statute, as its constitutional purposes will be fulfilled by the above statutory changes. If the legislature is unwilling to do that, however, the revised version would not appear to be implicated by Lawrence v. Texas or Romer v. Evans.

14-177. Crime against nature.

N.C.G.S. 14-177 is repealed

OR

If any person shall ~~commit the crime against nature, with mankind or beast~~ engage in sexual intercourse or sex acts as defined by N.C.G.S. 14-27.1(4) with animals or wild beasts, he or she shall be punished as a Class I felon.