



# COLORADO DISTRICT ATTORNEYS' COUNCIL

## HB23-1135 Indecent Exposure FAQ



### § 18-7-302 Current Language

A person commits indecent exposure:

- (a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person;
- (b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

Indecent exposure is a class 1 misdemeanor. Indecent exposure is a class 6 felony if the violation is committed subsequent to two prior convictions of a violation of this section or of a violation of a comparable offense in any other state or in the United States, or of a violation of a comparable municipal ordinance.

For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

#### **1: Will this bill make peeing in public a felony?**

- No. Indecent exposure requires sexual intent in exposing genitals, or masturbation, to be prosecuted.

#### **2: Will this result in harsher punishments for juveniles?**

- No. The sentencing options for a juvenile for this crime are the same whether it is a felony or a misdemeanor.

#### **3: If a person masturbates in public and a child happens to be nearby, will it be a felony?**

- No. The person must know there is a child in view in order to enhance the crime to a felony.

#### **4: Will this lower the burden of proof for prosecutors?**

- No. The burden is always "beyond a reasonable doubt" no matter what crime level. A jury would have to find indecent exposure was committed, and also answer a special question that they found it was proven beyond a reasonable doubt that the defendant knew they were in view of a child when committing the crime.

#### **5: Are people harmed by sexual exposure of genitals/masturbation?**

- Yes, especially children. Studies show that victims of indecent exposure are traumatized and suffer mental health impacts due to this sexual offense, even if they aren't physically assaulted.

#### **6: Why do we need this change now?**

- Current law is inconsistent – masturbating online to a child is a class four felony (C.R.S. 18-3-405.4), allowing sex offense intensive supervised probation to be ordered, or prison. But, if it is done in person, a court can only impose non-sex offense probation and up to 364 days in county jail. This is the only sexual crime that when committed against a child, carries misdemeanor penalties. These offenders need more supervision and more incentive to get treatment in order to stop offending, which is often more daunting than a short stint in county jail.

**For more information contact CDAC's Jessica Dotter at [jessica@cdac.state.co.us](mailto:jessica@cdac.state.co.us)**

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