

**Effective 5/1/2024**

**Renumbered 5/7/2025**

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

(1) As used in this section:

- (a) "In the presence of" includes within visual contact through an electronic device.
- (b) "Common area of a privacy space" means the same as that term is defined in Section 76-9-702.
- (c) "Privacy space" means the same as that term is defined in Section 76-9-702.8.

(2) An actor commits lewdness involving a child if:

- (a) the actor, under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following in the presence of a child who is under 14 years old:
  - (i) performs an act of sexual intercourse or sodomy;
  - (ii) exposes the actor's genitals, female breast below the top of the areola, buttocks, anus, or pubic area:
    - (A) in a public place; or
    - (B) in a private place under circumstances the actor should know will likely cause affront or alarm or with the intent to arouse or gratify the sexual desire of the actor or the child;
  - (iii) masturbates;
- (b) the actor is 18 years old or older and, under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following in the presence of a child who is under 14 years old with the intent to cause affront or alarm to the child or with the intent to arouse or gratify the sexual desire of the actor or the child:
  - (i) simulates masturbation;
  - (ii) performs an act of simulated intercourse or sodomy;
  - (iii) displays the actor's male genitals or prosthetic male genitals in a discernibly turgid state, even if completely and opaquely covered;
  - (iv) engages in erotic touching of the actor's nude breast, regardless of the actor's sex or how the breast was developed or created; or
  - (v) involves a child in an act that would lead a reasonable person to conclude that the child is engaging in an act of:
    - (A) simulated intercourse or sodomy; or
    - (B) simulated masturbation;
- (c) the actor, under circumstances not amounting to sexual exploitation of a child under Section 76-5b-201 or aggravated sexual exploitation of a child under Section 76-5b-201.1, intentionally or knowingly causes a child under 14 years old to expose the child's genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or
- (d) the actor performs any other act of lewdness.

(3)

- (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A misdemeanor.
- (b) A violation of Subsection (2) is a third degree felony if at the time of the violation, the actor:
  - (i) is a sex offender as defined in Section 77-27-21.7;
  - (ii) previously has been convicted of a violation of this section;

- (iii) commits the violation of Subsection (2) while also committing the offense of:
    - (A) criminal trespass in a sex-designated changing room under Subsection 76-6-206(2)(d);
    - (B) lewdness under Section 76-9-702;
    - (C) voyeurism under Section 76-9-702.7; or
    - (D) loitering in a privacy space under Section 76-9-702.8; or
  - (iv) commits the violation of Subsection (2) in a sex-designated privacy space, as defined in Section 76-9-702.8, that is not designated for individuals of the actor's sex.
- (4)
- (a) The common area of a privacy space constitutes a public place or circumstance described in Subsection (2) where an act or an attempted act described in Subsection (2) constitutes lewdness involving a child.
  - (b) Within the common area of a government entity's dressing room, fitting room, locker room, changing facility, or any other space designated for multiple individuals to dress or undress within the same space, exposing, displaying, or otherwise uncovering genitalia that does not correspond with the sex designation of the changing room constitutes an act or an attempted act described in Subsection (2) that constitutes lewdness involving a child.