

28 **76-9-702. Lewdness.**

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

34 (a) an act of sexual intercourse or sodomy;

35 (b) exposes his or her genitals, the female breast below the top of the areola, the
 36 buttocks, the anus, or the pubic area;

37 (c) masturbates; [~~or~~]

38 (d) ~~He~~ **[without permission;] an adult person** ~~He~~ forcibly kisses the mouth of a person
 38a who is 14 years of age or
 39 older but under the age of 18 ~~He~~ **, with the intent to cause substantial emotional or bodily pain**
 39a **to any person or with the intent to arouse or gratify the sexual desire of any person, without**
 39b **consent of the other, regardless of the sex of any participant** ~~He~~ **; or**

40 [~~and~~] (e) any other act of lewdness.

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 (c) (i) For purposes of this Subsection (2) and Subsection 77-41-102(17), a plea of
 51 guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77,
 52 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

53 (ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been
 54 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

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

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

59 **76-9-702.5. Lewdness involving a child.**

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

65 (a) performs an act of sexual intercourse or sodomy;

66 (b) exposes his or her genitals, the female breast below the top of the areola, the
 67 buttocks, the anus, or the pubic area:

68 (i) in a public place; or

69 (ii) in a private place:

70 (A) under circumstances the person should know will likely cause affront or alarm; or

71 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;

72 (c) masturbates;

73 (d) under circumstances not amounting to sexual exploitation of a child under Section
 74 76-5b-201, causes a child under the age of 14 years to expose his or her genitals, anus, or
 75 breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor
 76 or the child; [or]

77 (e) ~~is~~ **[without permission:] an adult person** ~~is~~ **forcibly kisses the mouth of a child**
 77a **under 14 years of age** ~~is~~ **, with the intent to cause substantial emotional or bodily pain to any**
 77b **person or with the intent to arouse or gratify the sexual desire of any person, without consent**
 77c **of the other, regardless of the sex of any participant** ~~is~~ **; or**

78 [~~e~~] (f) performs any other act of lewdness.

79 (2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection

80 (2)(b).

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

82 (i) the person is a sex offender as defined in Section 77-27-21.7; or

83 (ii) the person has previously been convicted of a violation of this section.