

Representative Colin W. Jack proposes the following substitute bill:

LEWDNESS INVOLVING A CHILD AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill concerns the offense of lewdness involving a child.

Highlighted Provisions:

This bill:

▶ modifies the offense of lewdness involving a child, including criminal penalties;

and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

76-9-702.5, as last amended by Laws of Utah 2022, Chapter 185

Utah Code Sections Affected By Coordination Clause:

76-9-702.5, as last amended by Laws of Utah 2022, Chapter 185

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



26 *The following section is affected by a coordination clause at the end of this bill.*

27 Section 1. Section **76-9-702.5** is amended to read:

28 **76-9-702.5. Lewdness involving a child.**

29 (1) As used in this section, "in the presence of" includes within visual contact through
30 an electronic device.

31 (2) ~~[A person is guilty of]~~ An actor commits lewdness involving a child if the ~~[person]~~
32 actor, under circumstances not amounting to rape of a child, object rape of a child, sodomy
33 upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to
34 commit any of those offenses, intentionally or knowingly:

35 (a) does any of the following in the presence of a child who is under 14 years ~~[of age]~~
36 old:

37 (i) performs an act of sexual intercourse or sodomy;

38 (ii) exposes ~~[his or her]~~ the actor's genitals, ~~[the]~~ female breast below the top of the
39 areola, ~~[the]~~ buttocks, ~~[the]~~ anus, or ~~[the]~~ pubic area:

40 (A) in a public place; or

41 (B) in a private place under circumstances the ~~[person]~~ actor should know will likely
42 cause affront or alarm or with the intent to arouse or gratify the sexual desire of the actor or the
43 child; or

44 (iii) masturbates; ~~[or]~~

45 ~~[(iv) performs any other act of lewdness; or]~~

46 (b) does any of the following in the presence of a child who is under 14 years old with
47 the intent to cause affront or alarm ~~to the actor~~ to the child ~~or with the intent to arouse or gratify the~~
47a sexual desire of the
48 actor or the child:

49 (i) simulates masturbation;

50 (ii) performs an act of simulated intercourse or sodomy;

51 (iii) displays the actor's male genitals or prosthetic male genitals in a discernibly turgid
52 state, even if completely and opaquely covered;

53 (iv) engages in erotic touching of the actor's nude breast, regardless of the actor's sex or
54 how the breast was developed or created; or

55 (v) involves a child in an act that would lead a reasonable person to conclude that the
56 child is engaging in an act of:

57 (A) simulated intercourse or sodomy; or
 58 (B) simulated masturbation;
 59 ~~[(b)]~~ (c) under circumstances not amounting to sexual exploitation of a child under
 60 Section 76-5b-201 or aggravated sexual exploitation of a child under Section 76-5b-201.1,
 61 causes a child under ~~[the age of]~~ 14 years old to expose ~~[his or her]~~ the child's genitals, anus, or
 62 breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor
 63 or the child; or

64 (d) performs any other act of lewdness.

65 (3) (a) ~~[Lewdness involving a child is a class A misdemeanor, except under Subsection~~
 66 ~~(3)(b)]~~ Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A
 67 misdemeanor.

68 (b) ~~[Lewdness involving a child is a third degree felony if at the time of the violation:]~~
 69 A violation of Subsection (2) is a third degree felony if:

70 (i) ~~[the person]~~ at the time of the violation, the actor:

71 (A) is a sex offender as defined in Section 77-27-21.7; or

72 ~~[(ii)]~~ (B) [the person has] previously has been convicted of a violation of this
 73 section[-]; or

74 (ii) the actor's conduct was in violation of Subsection (2)(a)(i), (2)(a)(ii), (2)(a)(iii), or
 75 (2)(c).

76 Section 2. **Effective date.**

77 This bill takes effect on May 1, 2024.

78 Section 3. **Coordinating H.B. 424 with H.B. 257.**

79 If H.B. 424, Lewdness Involving a Child Amendments, and H.B. 257, Sex-based
 80 Designations for Privacy, Anti-bullying, and Women's Opportunities, both pass and become
 81 law, the Legislature intends that, on May 1, 2024, Subsection 76-9-702.5(3) be amended to
 82 read:

83 ~~[(3)(a)]~~ [Lewdness involving a child is a class A misdemeanor, except under Subsection
 84 ~~(3)(b)]~~ Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A
 85 misdemeanor.

86 (b) ~~[Lewdness involving a child is a third degree felony if at the time of the violation:]~~
 87 A violation of Subsection (2) is a third degree felony if:

88 (i) ~~[the person]~~ at the time of the violation, the actor:
89 (A) is a sex offender as defined in Section 77-27-21.7; [or]
90 [~~(ii) the person has~~] (B) previously has been convicted of a violation of this section[-];
91 (C) commits the violation of Subsection (2) while also committing the offense of:
92 (I) criminal trespass in a sex-designated changing room under Subsection
93 76-6-206(2)(d);
94 (II) lewdness under Section 76-9-702;
95 (III) voyeurism under Section 76-9-702.7; or
96 (IV) loitering in a privacy space under Section 76-9-702.8; or
97 (D) commits the violation of Subsection (2) in a sex-designated privacy space, as
98 defined in Section 76-9-702.8, that is not designated for individuals of the actor's sex; or
99 (ii) the actor's conduct was in violation of Subsection (2)(a)(i), (2)(a)(ii), (2)(a)(iii), or
100 (2)(c)."