

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 or with the intent to arouse or gratify the 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)."