

**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

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**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; 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

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

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



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

27 **76-9-702.5. Lewdness involving a child.**

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

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

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

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

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

39 (A) in a public place; or

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

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

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

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

48 (i) simulates masturbation;

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

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

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

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

56 (A) simulated intercourse or sodomy; or

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

63            (d) performs any other act of lewdness.

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

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

- 69            (i) ~~[the person]~~ is a sex offender as defined in Section [77-27-21.7](#); or
- 70            (ii) ~~[the person has]~~ previously has been convicted of a violation of this section.

71            Section 2. **Effective date.**

72            This bill takes effect on May 1, 2024.

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

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

78            ~~"(3)(a) [Lewdness involving a child is a class A misdemeanor, except under Subsection~~  
 79 ~~(3)(b)]~~ Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A  
 80 misdemeanor.

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

- 83            (i) ~~[the person]~~ is a sex offender as defined in Section [77-27-21.7](#); ~~[or]~~
- 84            ~~[(ii) the person has]~~ (ii) previously has been convicted of a violation of this section~~[-];~~
- 85            (iii) commits the violation of Subsection (2) while also committing the offense of:

86            (A) criminal trespass in a sex-designated changing room under Subsection

87 [76-6-206\(2\)\(d\)](#);

- 88            (B) lewdness under Section [76-9-702](#);  
89            (C) voyeurism under Section [76-9-702.7](#); or  
90            (D) loitering in a privacy space under Section [76-9-702.8](#); or  
91            (iv) commits the violation of Subsection (2) in a sex-designated privacy space, as  
92            defined in Section [76-9-702.8](#), that is not designated for individuals of the actor's sex."