

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3642

6 By: Hasenbeck

7 COMMITTEE SUBSTITUTE

8 An Act relating to crimes and punishments; amending
9 21 O.S. 2021, Sections 1021.2, 1024.1 and 1040.12a,
10 which relate to the Oklahoma Law on Obscenity and
11 Child Pornography; modifying scope of certain
12 unlawful act; updating certain defined terms; adding
13 definitions; updating statutory references; and
14 providing an effective date.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 21 O.S. 2021, Section 1021.2, is
17 amended to read as follows:

18 Section 1021.2 A. Any person who shall procure or cause the
19 participation of any minor under the age of eighteen (18) years in
20 any child pornography or obscene material or who knowingly
21 possesses, views, accesses, shares, streams, procures, or
22 manufactures, or causes to be possessed, viewed, accessed, shared,
23 streamed, sold or distributed, any child pornography or obscene
24 material shall ~~be guilty~~, upon conviction, be guilty of a felony and
shall be punished by imprisonment in the custody of the Department

1 of Corrections for not more than twenty (20) years, or by the
2 imposition of a fine of not more than Twenty-five Thousand Dollars
3 (\$25,000.00), or by both said fine and imprisonment. Persons
4 convicted under this section shall not be eligible for a deferred
5 sentence. Except for persons sentenced to life or life without
6 parole, any person sentenced to imprisonment for two (2) years or
7 more for a violation of this subsection shall be required to serve a
8 term of post-imprisonment supervision pursuant to subparagraph f of
9 paragraph 1 of subsection A of Section 991a of Title 22 of the
10 Oklahoma Statutes under conditions determined by the Department of
11 Corrections. The jury shall be advised that the mandatory post-
12 imprisonment supervision shall be in addition to the actual
13 imprisonment.

14 B. The consent of the minor, or of the mother, father, legal
15 guardian, or custodian of the minor to the activity prohibited by
16 this section shall not constitute a defense.

17 SECTION 2. AMENDATORY 21 O.S. 2021, Section 1024.1, is
18 amended to read as follows:

19 Section 1024.1 A. As used in Sections 1021, 1021.1 through
20 1021.4, Sections 1022 ~~through 1024,~~ 1023, and Sections 1040.8
21 through 1040.24 of this title, "child pornography" means ~~and~~
22 ~~includes any:~~

23 1. Any visual depiction ~~or individual image stored or contained~~
24 ~~in any format on any medium including, but not limited to, film,~~

1 ~~motion picture, videotape, photograph, negative, undeveloped film,~~
2 ~~slide, photographic product, reproduction of a photographic product,~~
3 ~~play or performance wherein a minor under the age of eighteen (18)~~
4 ~~years is of a child engaged in any act with a person, other than his~~
5 ~~or her spouse, of sexual intercourse which is normal or perverted,~~
6 ~~in any act of anal sodomy, in any act of sexual activity with an~~
7 ~~animal, in any act of sadomasochistic abuse including, but not~~
8 ~~limited to, flagellation or torture, or the condition of being~~
9 ~~fettered, bound or otherwise physically restrained in the context of~~
10 ~~sexual conduct, in any act of fellatio or cunnilingus, in any act of~~
11 ~~excretion in the context of sexual conduct, in any lewd exhibition~~
12 ~~of the uncovered genitals in the context of masturbation or other~~
13 ~~sexual conduct, or where the lewd exhibition of the uncovered~~
14 ~~genitals, buttocks or, if such minor is a female, the breast, has~~
15 ~~the purpose of sexual stimulation of the viewer, or wherein a person~~
16 ~~under the age of eighteen (18) years observes such acts or~~
17 ~~exhibitions. Each visual depiction or individual image shall~~
18 ~~constitute a separate item and multiple copies of the same identical~~
19 ~~material shall each be counted as a separate item of sexually~~
20 ~~explicit conduct;~~

21 2. Any visual depiction of a child that has been adapted,
22 altered, or modified so that the child depicted appears to be
23 engaged in any act of sexually explicit conduct; or

24

1 3. Any visual depiction that appears to be a child, regardless
2 of whether the image is a depiction of an actual child, a computer-
3 generated image, or an image altered to appear to be a child,
4 engaged in any act of sexually explicit conduct, and such visual
5 depiction is obscene.

6 B. Each visual depiction or individual image of child
7 pornography shall constitute a separate item and act.

8 C. As used in Sections 1021 through 1024.4 and Sections 1040.8
9 through 1040.24 of this title:

10 1. ~~"Obscene material"~~ "Child" means a person under eighteen
11 (18) years of age;

12 2. "Obscene" means ~~and includes any representation,~~
13 ~~performance, or depiction or description of sexual conduct, whether~~
14 ~~in any form or on any medium including still photographs,~~
15 ~~undeveloped photographs, motion pictures, undeveloped film,~~
16 ~~videotape, optical, magnetic or solid-state storage, CD or DVD, or a~~
17 ~~purely photographic product or a reproduction of such product in any~~
18 ~~book, pamphlet, magazine, or other publication or electronic or~~
19 ~~photo-optical format, if said items contain the following elements~~
20 material when taken as a whole:

21 a. ~~depictions or descriptions of sexual conduct which are~~
22 ~~patently offensive~~ appeals to the prurient interest in
23 sex as found determined by the average person applying
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1 the contemporary ~~community~~ standards of their
2 community,

3 b. ~~taken as a whole, have as the dominant theme an appeal~~
4 ~~to prurient interest in sex as found by the average~~
5 ~~person applying contemporary community standards~~
6 depicts, represents, or displays sexually explicit
7 conduct in a patently offensive way, and

8 c. a reasonable person would find the material or
9 performance ~~taken as a whole~~ lacks serious literary,
10 artistic, educational, political, or scientific
11 ~~purposes or~~ value.

12 The standard for obscenity applied in this section shall not apply
13 to child pornography as defined by paragraph 1 of subsection A of
14 this section;

15 2. "Performance" means ~~and includes~~ any display, live ~~or,~~
16 recorded, or transmitted in any form or medium;

17 3. ~~"Sexual conduct"~~ "Sexually explicit conduct" means ~~and~~
18 ~~includes~~ any of the following whether actual or simulated:

- 19 a. acts of sexual intercourse ~~including any intercourse~~
20 ~~which is normal or perverted, actual or simulated,~~
- 21 b. acts of ~~deviate sexual conduct, including~~ oral and
22 anal sodomy,
- 23 c. acts of masturbation,
- 24 d. acts of sexual activity with an animal,

1 e. acts of sadomasochistic abuse including ~~but not~~
2 ~~limited to:~~

3 (1) flagellation or torture by or upon any person who
4 is nude or clad in undergarments or in a costume
5 which is of a revealing nature, or

6 (2) the condition of being fettered, bound, or
7 otherwise physically restrained on the part of
8 one who is nude or so clothed,

9 ~~e.~~ f. acts of excretion in a sexual context, or

10 ~~f.~~ acts of

11 g. exhibiting ~~human genitals~~ genitalia, breast, or pubic
12 ~~areas~~ area for the purpose of the sexual stimulation
13 of the viewer; and

14 4. "Explicit child pornography" means material which a law
15 enforcement officer can immediately identify upon first viewing
16 without hesitation as child pornography-

17 ~~The types of sexual conduct described in paragraph 3 of this~~
18 ~~subsection are intended to include situations when, if appropriate~~
19 ~~to the type of conduct, the conduct is performed alone or between~~
20 ~~members of the same or opposite sex or between humans and animals in~~
21 ~~an act of apparent sexual stimulation or gratification; and~~

22 5. "Visual depiction" means any depiction, picture, movie,
23 performance, or image displayed, stored, shared, or transmitted in
24

1 any format and on any medium including data that is capable of being
2 converted into a depiction, picture, movie, performance, or image.

3 SECTION 3. AMENDATORY 21 O.S. 2021, Section 1040.12a, is
4 amended to read as follows:

5 Section 1040.12a. A. Any person who, with knowledge of its
6 contents, possesses one hundred (100) or more separate materials
7 depicting child pornography shall ~~be~~, upon conviction, be guilty of
8 aggravated possession of child pornography. The violator shall be
9 punished by imprisonment in the custody of the Department of
10 Corrections for a term not exceeding life imprisonment and by a fine
11 in an amount of not more than Ten Thousand Dollars (\$10,000.00).
12 The violator, upon conviction, shall be required to register as a
13 sex offender under the Sex Offenders Registration Act.

14 B. For purposes of this section:

15 1. Multiple copies of the same identical material shall each be
16 counted as a separate item;

17 2. The term "material" means the same definition provided by
18 Section 1040.75 of ~~Title 21 of the Oklahoma Statutes~~ this title and,
19 in addition, includes all digital and computerized images and
20 depictions; and

21 3. The term "child pornography" means the same definition
22 provided by Section ~~1040.80~~ 1024.1 of ~~Title 21 of the Oklahoma~~
23 ~~Statutes and, in addition, includes sexual conduct, sexual~~
24 ~~excitement, sadomasochistic abuse, and performance of material~~

1 ~~harmful to minors where a minor is present or depicted as such terms~~
2 ~~are defined in Section 1040.75 of Title 21 of the Oklahoma Statutes~~
3 this title.

4 SECTION 4. This act shall become effective November 1, 2024.

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