

1 ENGROSSED HOUSE  
2 BILL NO. 3642

By: Hasenbeck and Dollens of  
the House

3 and

4 Treat of the Senate  
5  
6

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

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

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

16 Section 1021.2 A. Any person who shall procure or cause the  
17 participation of any minor under the age of eighteen (18) years in  
18 any child pornography or obscene material or who knowingly  
19 possesses, views, accesses, shares, streams, downloads, procures,  
20 sells, distributes, or manufactures, or causes to be possessed,  
21 viewed, accessed, shared, streamed, downloaded, procured, sold or,  
22 distributed, or manufactured any child pornography shall ~~be guilty,~~  
23 upon conviction, be guilty of a felony and shall be punished by  
24 imprisonment in the custody of the Department of Corrections for not

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

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

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

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

22 1. Any visual depiction ~~or individual image stored or contained~~  
23 ~~in any format on any medium including, but not limited to, film,~~  
24 ~~motion picture, videotape, photograph, negative, undeveloped film,~~

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

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

23 3. Any visual depiction that appears to be a child, regardless  
24 of whether the image is a depiction of an actual child, a computer-

1 generated image, or an image altered to appear to be a child,  
2 engaged in any act of sexually explicit conduct, and such visual  
3 depiction is obscene.

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

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

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

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

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

24

- 1           b. ~~taken as a whole, have as the dominant theme an appeal~~  
2           ~~to prurient interest in sex as found by the average~~  
3           ~~person applying contemporary community standards~~  
4           depicts, represents, or displays sexually explicit  
5           conduct in a patently offensive way, and
- 6           c. a reasonable person would find the material or  
7           performance ~~taken as a whole~~ lacks serious literary,  
8           artistic, educational, political, or scientific  
9           ~~purposes or value.~~

10 ~~The standard for obscenity applied in this section shall not apply~~  
11 ~~to child pornography;~~

12       ~~2.~~ 3. "Performance" means ~~and includes~~ any display, live ~~or,~~  
13 recorded, or transmitted, in any form or medium;

14       ~~3.~~ 4. "~~Sexual conduct~~" "Sexually explicit conduct" means ~~and~~  
15 ~~includes~~ any of the following whether actual or simulated:

- 16           a. acts of sexual intercourse ~~including any intercourse~~  
17           ~~which is normal or perverted, actual or simulated,~~
- 18           b. acts of ~~deviate sexual conduct, including~~ oral and  
19           anal sodomy,
- 20           c. acts of masturbation,
- 21           d. acts of sexual activity with an animal,
- 22           e. acts of ~~sadomasochistic abuse~~ sadomasochism including  
23           ~~but not limited to:~~
- 24

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

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

7 e.

8 f. acts of excretion in a sexual context, or

9 ~~f.~~ ~~acts of~~

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

13 ~~4.~~ 5. "Explicit child pornography" means material which a law  
14 enforcement officer can immediately identify ~~upon first viewing~~  
15 ~~without hesitation~~ as child pornography.

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

21 6. "Visual depiction" means any depiction, picture, movie,  
22 performance, or image displayed, stored, shared, or transmitted in  
23 any format and on any medium including data that is capable of being  
24 converted into a depiction, picture, movie, performance, or image.

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

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

12 B. For purposes of this section:

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

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

19 ~~3.~~ 2. The ~~term~~ terms "child pornography" ~~means and~~ "visual  
20 depictions" ~~mean~~ the same ~~definition~~ definitions provided by Section  
21 ~~1040.80~~ 1024.1 of Title 21 of the Oklahoma Statutes and, in  
22 addition, ~~includes sexual conduct, sexual excitement,~~  
23 ~~sadomasochistic abuse, and performance of material harmful to minors~~

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

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

4 Passed the House of Representatives the 7th day of March, 2024.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_ 2024.

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Presiding Officer of the Senate

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