

An Act

ENROLLED HOUSE
BILL NO. 3456

By: Moore, Conley, Bashore,
West (Kevin), Baker, and
Kerbs of the House

and

Howard of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 2021, Sections 1040.75 and 1040.76, which relate to the display of materials harmful to minors; modifying scope of certain definitions; deleting definitions; providing findings and statement of legislative intent; and providing an effective date.

SUBJECT: Crimes and punishments

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 1040.75, is amended to read as follows:

Section 1040.75 As used in Sections 1040.75 through 1040.77 of this title:

1. "Minor" means any ~~unmarried~~ person under the age of eighteen (18) years;
2. "Harmful to minors" means:
 - a. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

- (1) the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors, and
- (2) the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
- (3) the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors, or

- b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence;

3. "Inappropriate violence" means any description or representation, in an interactive video game or computer software, of violence which, taken as a whole, has the following characteristics:

- a. the average person eighteen (18) years of age or older applying contemporary community standards would find that the interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
- b. the interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:
 - (1) is glamorized or gratuitous,
 - (2) is graphic violence used to shock or stimulate,

- (3) is graphic violence that is not contextually relevant to the material,
- (4) is so pervasive that it serves as the thread holding the plot of the material together,
- (5) trivializes the serious nature of realistic violence,
- (6) does not demonstrate the consequences or effects of realistic violence,
- (7) uses brutal weapons designed to inflict the maximum amount of pain and damage,
- (8) endorses or glorifies torture or excessive weaponry, or
- (9) depicts lead characters who resort to violence freely;

4. "Nudity" means the:

- a. showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering,
- b. showing of the female breast with less than a full opaque covering of any portion of the female breast below the top of the nipple, or
- c. depiction of covered male genitals in a discernibly turgid state;

5. "Sexual conduct" means ~~acts of masturbation, homosexuality,~~ sexual intercourse, ~~or~~ physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast, or fellatio, cunnilingus, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, or depictions or descriptions of sexual bestiality, sadomasochism, masturbation, or excretory functions;

6. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

7. "Sadomasochistic abuse" means flagellation or torture by or upon a person clothed or naked or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed or naked;

8. "Material" means anything tangible that is capable of being used or adapted to arouse prurient interest, whether through the medium of reading, observation, sound, or in any other manner including, but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, drawing, pictorial representation, motion picture film, record, recording tape, CD-ROM disk, Magnetic Disk Memory, Magnetic Tape Memory, photograph, video tape, computer software or video disk, film, transparency, slide, audiotape, audio disk, computer tape, video game, or any other medium used to electronically produce or reproduce images on a screen, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent;

9. ~~"CD-ROM" means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors;~~

10. ~~"Magnetic Disk Memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes;~~

11. ~~"Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;~~

12. "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration;

13. 10. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- a. the character and content of any material or performance which is reasonably susceptible of examination by the defendant, and

- b. the age of the minor. However, an honest mistake, shall constitute an excuse from liability pursuant to this act if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor;

~~14.~~ 11. "Person" means any individual, partnership, association, corporation, or other legal entity of any kind; and

~~15.~~ 12. "A reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

SECTION 2. AMENDATORY 21 O.S. 2021, Section 1040.76, is amended to read as follows:

Section 1040.76 The Legislature finds that protecting minor children from overtly sexual and violent content is a legitimate objective that should be actively enforced.

The Legislature further finds that the protection of the right of the people to engage in the freedom of speech and expression is a sacred right in the United States; however, such performances and materials may not contain depictions of sexual conduct, nudity, or inappropriate violence which are harmful to minor children.

Therefore, it is the intent of the Legislature that these provisions be diligently enforced to protect minor children while also protecting the free speech rights of the public.

No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds (2/3) of the material is not exposed to view;

2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or

3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

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

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

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of April, 2024.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____