

An Act

ENROLLED HOUSE
BILL NO. 3642

By: Hasenbeck, Dollens, and
Stark of the House

and

Treat and Jett of the
Senate

An Act relating to crimes and punishments; amending 21 O.S. 2021, Sections 1021.2, 1024.1 and 1040.12a, which relate to the Oklahoma Law on Obscenity and Child Pornography; modifying scope of certain unlawful act; updating certain defined terms; defining terms; updating statutory references; 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 1021.2, is amended to read as follows:

Section 1021.2 A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or obscene material or who knowingly possesses, views, accesses, shares, streams, downloads, procures, sells, distributes, or manufactures, or causes to be possessed, viewed, accessed, shared, streamed, downloaded, procured, sold or, distributed, or manufactured any child pornography shall ~~be guilty,~~ upon conviction, be guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than twenty (20) years ~~or~~ and by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) ~~or by both said fine and imprisonment.~~ Persons convicted under this section shall not be eligible for a deferred sentence. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this

subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

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

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

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

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

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

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

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

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

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

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

- a. depictions or descriptions of sexual conduct which are patently offensive appeals to the prurient interest in sex as found determined by the average person applying the contemporary community standards of their community,
- b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards depicts, represents, or displays sexually explicit conduct in a patently offensive way, and
- c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

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

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

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

- a. acts of sexual intercourse ~~including any intercourse which is normal or perverted, actual or simulated,~~
- b. acts of ~~deviate sexual conduct, including~~ oral and anal sodomy,
- c. acts of masturbation,
- d. acts of sexual activity with an animal,
- e. acts of ~~sadomasochistic abuse~~ sadomasochism including ~~but not limited to:~~
 - (1) flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature, or
 - (2) the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed,
- ~~e.~~
- f. acts of excretion in a sexual context, or
- ~~f.~~ ~~acts of~~
- g. exhibiting ~~human genitals~~ genitalia, breast, or pubic areas area for the purpose of the sexual stimulation of the viewer; and

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

~~The types of sexual conduct described in paragraph 3 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between~~

~~members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification; and~~

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

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

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

B. For purposes of this section:

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

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

~~3. 2. The term terms "child pornography" means and "visual depictions" mean the same definition definitions provided by Section 1040.80 1024.1 of Title 21 of the Oklahoma Statutes and, in addition, includes sexual conduct, sexual excitement, sadomasochistic abuse, and performance of material harmful to minors where a minor is present or depicted as such terms are defined in Section 1040.75 of Title 21 of the Oklahoma Statutes this title.~~

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

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

Presiding Officer of the House
of Representatives

Passed the Senate the 17th 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: _____