

1 **SENATE FLOOR VERSION**

2 April 2, 2024

3 ENGROSSED HOUSE
4 BILL NO. 3642

By: Hasenbeck, Dollens, and
Stark of the House

5 and

6 Treat of the Senate

7
8
9 An Act relating to crimes and punishments; amending
10 21 O.S. 2021, Sections 1021.2, 1024.1 and 1040.12a,
11 which relate to the Oklahoma Law on Obscenity and
12 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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14
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, downloads, procures,
22 sells, distributes, or manufactures, or causes to be possessed,
23 viewed, accessed, shared, streamed, downloaded, procured, sold or,
24 distributed, or manufactured any child pornography shall ~~be guilty,~~

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

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

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

20 Section 1024.1 A. As used in Sections 1021, 1021.1 through
21 1021.4, Sections 1022 ~~through 1024~~, 1023, and Sections 1040.8
22 through 1040.24 of this title, "child pornography" means ~~and~~
23 ~~includes any~~:
24

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

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

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

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

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

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

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

24

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

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

17 ~~2.~~ 3. "Performance" means ~~and includes~~ any display, live ~~or,~~
18 recorded, or transmitted, in any form or medium;

19 ~~3.~~ 4. "~~Sexual conduct~~" "Sexually explicit conduct" means ~~and~~
20 ~~includes~~ any of the following whether actual or simulated:

- 21 a. acts of sexual intercourse ~~including any intercourse~~
22 ~~which is normal or perverted, actual or simulated,~~
- 23 b. acts of ~~deviate sexual conduct, including~~ oral and
24 anal sodomy,

1 c. acts of masturbation,

2 d. acts of sexual activity with an animal,

3 e. acts of ~~sadomasochistic abuse~~ sadomasochism including
4 ~~but not limited to:~~

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

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

11 ~~e.~~

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

13 ~~f.~~ acts of

14 g. exhibiting ~~human genitals~~ genitalia, breast, or pubic
15 ~~areas~~ area for the purpose of the sexual stimulation
16 of the viewer; and

17 ~~4.~~ 5. "Explicit child pornography" means material which a law
18 enforcement officer can immediately identify ~~upon first viewing~~
19 ~~without hesitation~~ as child pornography.

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

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

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

7 Section 1040.12a A. Any person who, with knowledge of its
8 contents, possesses one hundred (100) or more separate ~~materials~~
9 ~~depicting~~ visual depictions of child pornography shall ~~be~~, upon
10 conviction, be guilty of aggravated possession of child pornography.
11 The violator shall be punished by imprisonment in the custody of the
12 Department of Corrections for a term not exceeding life imprisonment
13 and by a fine in an amount of not more than Ten Thousand Dollars
14 (\$10,000.00). The violator, upon conviction, shall be required to
15 register as a sex offender under the Sex Offenders Registration Act.

16 B. For purposes of this section:

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

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

23 ~~3.~~ 2. The ~~term~~ terms "child pornography" ~~means~~ and "visual
24 depictions" ~~mean~~ the same ~~definition~~ definitions provided by Section

1 ~~1040.80~~ 1024.1 of Title 21 of the Oklahoma Statutes and, in
2 addition, includes sexual conduct, sexual excitement,
3 sadomasochistic abuse, and performance of material harmful to minors
4 where a minor is present or depicted as such terms are defined in
5 Section ~~1040.75~~ of Title 21 of the Oklahoma Statutes this title.

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 April 2, 2024 - DO PASS
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