

ENROLLED HOUSE
BILL NO. 2506

By: Perry of the House

and

Smith of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 1991, Sections 1021, 1021.2, 1021.3, 1022, 1023, 1024 and 1024.1, which relate to obscene materials; modifying list of materials to be prohibited; modifying penalty; prohibiting deferred sentences under certain circumstances; modifying prohibited acts; modifying definitions; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1021, is amended to read as follows:

Section 1021. A. Every person who willfully either:

1. Lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;;

2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;;

3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, book, picture, photograph, motion picture, figure, ~~or~~ form of any description, or any type of obscene material; or

4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or any other kind of sound recording of any obscene or indecent language, poetry, or songs, or who speaks any words by means of a telephone to any person which are offensive to decency or are calculated to excite vicious or lewd thoughts or acts, or who speaks any other communicable words which are offensive to decency or are adapted to excite vicious or lewd thoughts or acts, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00) nor more than ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty Thousand Dollars (\$20,000.00) or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or by both such fine and imprisonment. Persons convicted under paragraphs 3 and 4 of subsection A of this section shall not be eligible for a deferred sentence.

B. Every person who:

1. Willfully solicits or aids a minor child to perform;; or

2. Shows, exhibits, loans, or distributes to a minor child any obscene or indecent writing, paper, book, picture, photograph, motion picture, figure, or form of any description or any type of obscene material for the purpose of inducing said minor to participate in, any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty, upon conviction, of a felony and shall be punished by imprisonment in a state correctional institution for not less than ten (10) years nor more than thirty (30) years. Persons convicted under subsection B of this section shall not be eligible for a deferred sentence.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1021.2, is amended to read as follows:

Section 1021.2 Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any film, motion picture, videotape, photograph, negative, slide, drawing, painting, play, ~~or~~ performance or any type of obscene material wherein the minor is engaged in or portrayed, depicted, or represented as engaging in any act of sexual intercourse, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual activity, in any lewd exhibition of the uncovered genitals or pubic area or areola of the breasts in the context of masturbation or other sexual activity, or in any other exhibition of the uncovered genitals or pubic area or areola of the breasts having the purpose of sexual stimulation of the viewer, or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any ~~said~~ obscene material involving the participation of any minor under the age of eighteen (18) shall be guilty, upon conviction, of a felony and shall be punished by imprisonment for not more than twenty (20) years or 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. 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 3. AMENDATORY 21 O.S. 1991, Section 1021.3, is amended to read as follows:

Section 1021.3 Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any film, motion picture, videotape, photograph, negative, slide, drawing, painting, play ~~or~~, performance or any other obscene material wherein the minor is engaged in or portrayed, depicted or represented as engaging in any act of sexual intercourse, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual activity, or in any lewd exhibition of the uncovered genitals or pubic area or areola of the breasts in the context of masturbation or other sexual activity, shall be guilty of a felony and, upon conviction, shall be imprisoned in the State Penitentiary for a period of not more than twenty (20) years or a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or by both such fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1022, is amended to read as follows:

Section 1022. Every person who is authorized or enjoined to arrest any person for a violation of ~~subdivision three~~ paragraph 3

of ~~the last section~~ Section 1021 of this title is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print ~~or~~, figure or other obscene material found in possession of or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1023, is amended to read as follows:

Section 1023. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, ~~or~~ figure or other obscene material, is delivered pursuant to ~~the foregoing section~~ Section 1022 of this title, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, ~~or~~ figure or other obscene material, and if ~~he~~ the magistrate finds it to be obscene or indecent, ~~he~~ the magistrate shall cause the same to be destroyed, or to be delivered to the district attorney of the county in which the accused is liable to indictment or trial as the interests of justice in his judgment require, but no more than two copies of any one writing, paper, book, picture, print, ~~or~~ figure or other obscene material shall be delivered to the district attorney.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1024, is amended to read as follows:

Section 1024. Upon the conviction of the accused, such district attorney shall cause any writing, paper, book, picture, print, ~~or~~ figure or other obscene material, in respect whereof the accused stands convicted and which remains in the possession or under the control of such district attorney to be destroyed.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1024.1, is amended to read as follows:

Section 1024.1 As used in Sections 1021 through 1024.4 of this title:

1. "Obscene material" means and includes any ~~photographic product depicting actual human models or actors, whether in the form of~~ representation, depiction or description of sexual conduct, whether in any form or medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, CD-ROM, magnetic disk memory, magnetic tape memory or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, if said items contain the elements of paragraph 2 of this section~~;~~

2. "Performance" means and includes any live or cinematic show of whatever nature over any broadcast media, if the performance contains the following:

- a. the obscene material or performance has as one of its participants or portrayed observers a child under the age of eighteen (18) or who appears as prepubescent~~;~~ or
- b. the obscene material or performance contains depictions or descriptions of sexual conduct which are patently offensive~~;~~ and as found by the average person applying contemporary community standards,
- c. the obscene material or performance taken as a whole has as the dominant theme an appeal to prurient interest as found by the average person applying contemporary community standards~~;~~ and
- d. a reasonable person would find the obscene material or performance taken as a whole lacks serious literary,

artistic, educational, political, or scientific purposes or value-; and

3. "Sexual conduct" means and includes any of the following:
 - 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 sadomasochistic abuse 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. acts of excretion in a sexual context, or
 - f. acts of exhibiting human genitals or pubic areas.

The types of sexual conduct described in paragraph 3 of this section 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.

SECTION 8. This act shall become effective November 1, 1996.

Passed the House of Representatives the 12th day of March, 1996.

Speaker of the House of
Representatives

Passed the Senate the 2nd day of April, 1996.

President of the Senate