ENGROSSED HOUSE
BILL NO. 1012

By: Sullivan (John), Adair, Benge, Calvey, Coleman, Davis, Graves, Miller, Piatt, Pope (Tim), Roberts, Sullivan (Leonard) and Webb of the House

and

Snyder of the Senate

An Act relating to children; providing short title; stating legislative intent; amending 21 O.S. 1991, Section 843, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last amended by Section 127, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7115), which relates to abuse or neglect of children; modifying penalty; amending 21 O.S. 1991, Sections 1021, as last amended by Section 276, Chapter 133, O.S.L. 1997, 1021.2, as last amended by Section 277, Chapter 133, O.S.L. 1997, 1021.3, as last amended by Section 278, Chapter 133, O.S.L. 1997, and 1021.4 (21 O.S. Supp. 1998, Sections 1021, 1021.2 and 1021.3), which relate to obscenity; modifying penalties; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Sections 2 through 6 of this act shall be known and may be cited as the "Child Protection Act".

It is the intent of this act to strengthen the criminal penalties for certain lawbreakers who prey upon the trusting nature of children. It is further the purpose of this act to encourage the entire criminal justice community to deal with these offenders in the most punitive manner possible.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 843, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last

amended by Section 127, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7115), is amended to read as follows:

Section 7115. Any parent or other person who shall willfully or maliciously engage in child abuse or neglect or who shall otherwise willfully or maliciously injure, torture, maim, use unreasonable force upon a child under the age of eighteen (18), or sexually abuse, sexually exploit or otherwise abuse or neglect such child, or who shall willfully or maliciously cause, procure or permit any of said acts to be done, shall upon conviction be guilty of a felony, punishable by imprisonment in the State Penitentiary for a period of not less than five (5) years nor more than life imprisonment. The fine for a violation of this section shall not be less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00). As used in this section, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this section.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1021, as last amended by Section 276, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, 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, 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, punishable by imprisonment in a state correctional facility for not less than one (1) nor more than ten (10) years and shall not be eligible for probation, a suspended sentence or a deferred sentence. The fine for a violation of this subsection shall not be less than Five Hundred Dollars ($500.00) nor more than Twenty Thousand Dollars ($20,000.00). ~~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, punishable by imprisonment in a state correctional facility for not less than ten (10) nor more than thirty (30) years and shall not be eligible for

probation, a suspended sentence or a deferred sentence. ~~Persons convicted under this subsection shall not be eligible for a deferred sentence.~~

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1021.2, as last amended by Section 277, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, 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, 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 obscene material involving the participation of any minor under the age of eighteen (18) shall be guilty, upon conviction, of a felony, punishable by imprisonment in a state correctional facility for a period of not less than two (2) nor more than twenty (20) years. The fine for a violation of this section shall not be more than Twenty-five Thousand Dollars ($25,000.00). Persons convicted under this section shall not be eligible for probation, a suspended sentence or 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 5. AMENDATORY 21 O.S. 1991, Section 1021.3, as last amended by Section 278, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, 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, 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 a state correctional facility for a period of not less than five (5) nor more than twenty (20) years. The fine for a violation of this section shall not be more than Twenty-five Thousand Dollars ($25,000.00). Persons convicted under this section shall not be eligible for probation, a suspended sentence or a deferred sentence. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1021.4, is amended to read as follows:

Section 1021.4 Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his professional capacity or employment, any film, photograph, video tape, negative, or slide, depicting a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in Section 1024.1 of this title shall immediately or as soon as possible report by telephone such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case and

shall prepare and send a written report of the incident with a copy of the film, photograph, video tape, negative, or slide attached, within thirty-six (36) hours after receiving the information concerning the incident. For the purposes of this section, commercial film and photographic print processor shall mean any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person but shall not include a person who develops film or makes prints for a public agency. Any person who violates the provisions of this section, upon conviction, shall be guilty of a ~~misdemeanor and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail not to exceed one (1) year~~ felony, punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or imprisonment in a state correctional facility for a period of not less than one (1) year nor more than ten (10) years, or both such fine and imprisonment.

SECTION 7. This act shall become effective November 1, 1999.

Passed the House of Representatives the 8th day of March, 1999.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1999.

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President of the Senate