

ENGROSSED HOUSE
BILL NO. 2104

By: Paulk, Lindley, Calvey and
Nance of the House

and

Coffee of the Senate

(crimes and punishments - amending 23 sections in
Title 21 - obscene material and child pornography -
prohibiting certain acts - Oklahoma Law on
Obscenity and Child Pornography - repealing 21
O.S., Sections 1040.9, 1040.10, 1040.12, 1040.19
and 1040.51 -
effective date)

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1021, as
last amended by Section 179, Chapter 5, 1st Extraordinary Session,
O.S.L. 1999 (21 O.S. Supp. 1999, 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 child pornography; 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~~ child pornography, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than Five Hundred Dollars (\$500.00) nor more than 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 or child pornography 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 this subsection shall not be eligible for a deferred sentence.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1021.1, is amended to read as follows:

Section 1021.1 ~~This act~~ A. Sections 1021 through 1024.4 of this title shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise prescribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities, ~~or in the course of bona fide scientific education or comprehensive research or study, or bona fide objects of art or artistic pursuits, or like circumstances or justification, where the possession, distribution or conduct is not related to the subject matter's appeal to prurient interest.~~

B. The criminal provisions of this title shall not prohibit the district attorney from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of material harmful to minors, or the possession of child pornography.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1021.2, as last amended by Section 180, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 1999, 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, in any child pornography~~ 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) child pornography~~ 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 4. AMENDATORY 21 O.S. 1991, Section 1021.3, as last amended by Section 181, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 1999, 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,~~ child pornography 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 5. AMENDATORY 21 O.S. 1991, Section 1022, as amended by Section 4, Chapter 37, O.S.L. 1996 (21 O.S. Supp. 1999, 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 paragraph 3 of subsection A of Section 1021 of this title is equally authorized and enjoined to seize ~~any obscene or indecent writing, paper, book, picture, print, figure or other~~ one copy of the obscene material, or all copies of explicit child pornography, 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 6. AMENDATORY 21 O.S. 1991, Section 1023, as amended by Section 5, Chapter 37, O.S.L. 1996 (21 O.S. Supp. 1999, Section 1023), is amended to read as follows:

Section 1023. The magistrate to whom any ~~obscene or indecent writing, paper, book, picture, print, figure or other~~ child pornography, or any obscene material, is delivered pursuant to 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, figure~~ child pornography or ~~other~~ obscene material, and if the magistrate finds it to be obscene material or ~~indecent~~ child pornography, 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, figure or other~~ obscene material shall be delivered to the

~~district attorney.~~ The magistrate shall issue in writing the factual and legal basis for the determination by the magistrate of the character of the child pornography or obscene material.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1024, as amended by Section 6, Chapter 37, O.S.L. 1996 (21 O.S. Supp. 1999, Section 1024), is amended to read as follows:

Section 1024. Upon the final conviction of the accused, such district attorney shall cause any ~~writing, paper, book, picture, print, figure or other~~ child pornography, or 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 8. AMENDATORY 21 O.S. 1991, Section 1024.1, as amended by Section 7, Chapter 37, O.S.L. 1996 (21 O.S. Supp. 1999, Section 1024.1), is amended to read as follows:

Section 1024.1 A. As used in Sections 1021, 1021.1 through 1021.3, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this title, "child pornography" means and includes any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, play or performance wherein a minor under the age of eighteen (18) years is 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 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.

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

1. "Obscene material" means and includes any representation, performance, 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 following elements of paragraph 2 of this section:

- a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards,
- 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, 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 chapter shall not apply to child pornography as prohibited in Section 1021.2 of this title;

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 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 display, live or recorded, in any form or medium; 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; and

4. "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 ~~section~~ 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.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 1024.2, as last amended by Section 182, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 1999, Section 1024.2), is amended to read as follows:

Section 1024.2 It shall be unlawful for any person to buy, procure or possess ~~obscene material~~ child pornography in violation of Sections 1024.1 through 1024.4 of this title. Such person shall, upon conviction, be guilty of a felony and shall be imprisoned for a period of not more than five (5) years or a fine up to, but not exceeding, Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 1024.3, is amended to read as follows:

Section 1024.3 Every person who is authorized or enjoined to arrest any person for a violation of this act is equally authorized ~~and~~ or enjoined to seize an evidentiary copy of any obscene material or child pornography or all copies of explicit child pornography found in the possession of or under the control of the person so arrested and to deliver the obscene material or child pornography to the magistrate before whom the person so arrested is required to be taken.

SECTION 11. AMENDATORY 21 O.S. 1991, Section 1024.4, is amended to read as follows:

Section 1024.4 Upon conviction of the accused, any magistrate or district attorney shall cause any obscene material or child pornography, in respect whereof the accused stands convicted and

which remains in the possession or control of such magistrate or district attorney, to be destroyed.

SECTION 12. AMENDATORY 21 O.S. 1991, Section 1040.8, is amended to read as follows:

Section 1040.8 No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene, ~~filthy, indecent, lascivious, lewd, or unfit~~ material or child pornography, as defined in Section ~~1040.12~~ 1024.1 of this title. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post office or delivered to any person with intent that it shall be forwarded. The party mailing such material may be indicted and tried in any county wherein such material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person who violates any provision of this section, upon conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

SECTION 13. AMENDATORY 21 O.S. 1991, Section 1040.11, is amended to read as follows:

Section 1040.11 ~~This act~~ Sections 1021 through 1040.77 of this title shall be known as the "Oklahoma Law on Obscenity and Child Pornography" and may be referred to by that designation.

SECTION 14. AMENDATORY 21 O.S. 1991, Section 1040.13, is amended to read as follows:

Section 1040.13 Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this state for sale or commercial distribution, or in this state prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any ~~obscene, lewd, lascivious, filthy, or indecent electronic video game, printed or written matter or material or other article, or any article of obscene, lewd, lascivious, filthy, or indecent character or for indecent or immoral use, or any mailable matter made subject to this section by virtue of the provisions of Section 1040.21 of this title~~ material or child pornography or gives information stating when, where, how, or from whom, or by what means ~~any of these things~~ obscene material or child pornography can be purchased or obtained, upon conviction, is guilty of a ~~misdemeanor~~ felony and shall be punished by imprisonment ~~in the county jail~~ for not more than ~~one (1) year~~ ten (10) years in prison or by a fine of not more than ~~One Thousand Dollars (\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00), or by both such imprisonment and fine.

SECTION 15. AMENDATORY 21 O.S. 1991, Section 1040.14, is amended to read as follows:

Section 1040.14 (a) Whenever the Attorney General of this state or the district attorney for any district has reasonable cause to believe that any person, with knowledge of its contents, is (1) engaged in sending or causing to be sent, bringing or causing to be brought, into this state for sale or commercial distribution, or is (2) in this state preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell, or commercially distribute or to exhibit or give away or offer to give away, any ~~unfit mailable matter~~ obscene material or child pornography, the Attorney General

or the district attorney for the county into which such mailable matter is sent or caused to be sent, brought or caused to be brought, or in which it is prepared, sold, exhibited or commercially distributed or given away or offered to be given away, or possessed, may institute an action in the district court for an adjudication of the obscenity or child pornographic content of the mailable matter.

(b) The procedure to be followed shall be that set forth in this act.

SECTION 16. AMENDATORY 21 O.S. 1991, Section 1040.15, is amended to read as follows:

Section 1040.15 The action described in Section 4 1040.14 of this ~~act~~ title shall be commenced by filing with the court a petition:

(a) directed against the ~~mailable~~ matter by name or description;

(b) alleging ~~its unfit nature~~ it is obscene material or child pornography;

(c) listing the names and addresses, if known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into this state for sale or commercial distribution and of any person in this state preparing, selling, exhibiting or commercially distributing it, or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

(d) seeking an adjudication that it is ~~unfit~~ either obscene material or child pornography, as defined in Section 1024.1 of this title;

(e) seeking a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into this state for sale or commercial distribution, or in this state preparing, selling, exhibiting or commercially distributing it, giving away or offering to give it away, or possessing it with

intent to sell or commercially distribute or exhibit or give away or offer to give it away;

(f) seeking its surrender, seizure and destruction.

SECTION 17. AMENDATORY 21 O.S. 1991, Section 1040.16, is amended to read as follows:

Section 1040.16 (a) Upon the filing of the petition described in Section ~~5~~ 1040.15 of this ~~act~~ title, the court shall summarily examine the ~~maillable-matter~~ obscene material or child pornography.

(b) If the court finds no probable cause to believe it ~~unfit~~ is obscene material or child pornography, the court shall dismiss the petition.

(c) If the court finds probable cause to believe it ~~unfit~~ is obscene material or child pornography, the court shall immediately issue an order or rule to show cause why it should not be adjudicated ~~unfit~~ to be obscene material or child pornography.

(d) The order or rule to show cause shall be:

(1) directed against it by name or description;

(2) if their names and addresses are known, served personally in the manner provided in this act for the service of process or in any manner now or hereafter provided by law, upon its author, publisher, and any other person interested in sending or causing it to be sent, bringing or causing it to be brought, into this state for sale or commercial distribution, and on any person in this state preparing, selling, exhibiting or commercially distributing it or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

(3) returnable six (6) days after its service.

SECTION 18. AMENDATORY 21 O.S. 1991, Section 1040.17, is amended to read as follows:

Section 1040.17 (a) On or before the return date specified in the order or rule to show cause, the author, publisher, or any

person interested in sending or causing to be sent, bringing or causing to be brought, into this state for sale or commercial distribution, or any person in this state preparing, selling, exhibiting or commercially distributing, or giving away or offering to give away, or possessing with intent to sell or commercially distribute or exhibit or give away or offer to give away, the ~~maillable~~ matter may appear and file an answer.

(b) The court may, by order, permit any other person to appear and file an answer as amicus curiae. A person granted permission and appearing and filing an answer has all the rights of a party to the proceeding.

(c) If no person appears and files an answer on or before the return date specified in the order or rule to show cause, the court shall enter judgment either

(1) adjudicating the ~~maillable~~ matter not to be ~~unfit~~ obscene material or child pornography, if the court so finds; or

(2) adjudicating it to be ~~unfit~~ obscene material or child pornography, if the court so finds.

(d) Every person appearing and answering shall be entitled, upon request, to a trial of the issues before the court not less than three (3) days after a joinder of issue.

SECTION 19. AMENDATORY 21 O.S. 1991, Section 1040.20, is amended to read as follows:

Section 1040.20 In the event that a judgment is entered adjudicating the ~~maillable~~ matter to be ~~unfit~~ obscene material or child pornography, the court shall further:

(a) order the person or persons having possession of it to surrender it to the sheriff for destruction and, in the event that person refuses, order the sheriff in the county in which the action was brought to seize and destroy it;

(b) enter a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into

this state for sale or commercial distribution, and against any person in this state preparing, selling, exhibiting or commercially distributing it, giving it away or offering to give it away, or having it in his possession with intent to sell or commercially distribute or exhibit or give it away or offer to give it away.

SECTION 20. AMENDATORY 21 O.S. 1991, Section 1040.21, is amended to read as follows:

Section 1040.21 Any ~~maillable~~ matter which, following the entry of a judgment that it is ~~unfit~~ obscene material or child pornography, is sent or caused to be sent, brought or caused to be brought, into this state for sale or commercially distributed, given away or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of Section ~~3~~ 1040.13 of this ~~act~~ title.

SECTION 21. AMENDATORY 21 O.S. 1991, Section 1040.22, is amended to read as follows:

Section 1040.22 After the entry of a judgment that the ~~maillable~~ matter is ~~unfit~~ obscene material or child pornography, any person who, with knowledge of the judgment or of the order or rule to show cause, sends or causes to be sent, brings or causes to be brought, into this state for sale or commercial distribution, the ~~maillable~~ matter, or who in this state sells, exhibits or commercially distributes it, gives away or offers to give it away, or has it in his possession with intent to sell or commercially distribute or exhibit or give away or offer to give it away, shall be guilty of contempt of court and upon conviction after notice and hearing shall be imprisoned in the county jail for not more than one (1) year or fined not more than One Thousand Dollars (\$1,000.00), or be so imprisoned or fined.

SECTION 22. AMENDATORY 21 O.S. 1991, Section 1040.24, is amended to read as follows:

Section 1040.24 The possession of two or more of any single ~~one~~ ~~of the things enumerated in Section 3 of this act~~ article that is obscene material or child pornography, or the possession of a combined total of any five ~~of any of those things~~ articles that are obscene material or child pornography (except the possession of them for the purpose of return to the person from whom received) shall create a presumption that they are intended for sale or commercial distribution, exhibition or gift, but such presumption shall be rebuttable. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

SECTION 23. AMENDATORY 21 O.S. 1991, Section 1040.54, is amended to read as follows:

Section 1040.54 A. Any peace officer of this state is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 and subparagraph a of paragraph 2 subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes this title, or child pornography, as defined in subsection A of Section 1024.1 of this title. Said equipment may be held as evidence until a forfeiture has been declared or a release ordered.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and

2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

D. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the state, if such fact is proven.

E. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

F. At the hearing the state shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 ~~and subparagraph a of paragraph 2~~ subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes this title, or child pornography, as defined in paragraph 1 of subsection A of Section 1024.1 of this title, with knowledge by the owner of the equipment.

G. The owner or party in interest may prove that his right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due him is equal to, or in excess of, the value of the equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to the state and shall be sold pursuant to the judgment of the court.

J. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county where the equipment was seized. The district attorney may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of such equipment. Equipment which has not been released by the district attorney shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

K. The district attorney shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of his interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the equipment;

3. The balance to a revolving fund in the office of the county treasurer of the county where the equipment was seized, said fund to be used and maintained as a revolving fund for any purpose by the department that made the seizure with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a

bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. When any equipment is forfeited pursuant to this section, the district court of jurisdiction may order that the equipment seized may be retained by the state, county, or municipal law enforcement agency which seized the equipment for its official use.

N. If the court finds that the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 and subparagraph a of paragraph 2 subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes this title, or child pornography, as defined in paragraph 1 of subsection A of Section 1024.1 of this title, the court shall order the equipment released to the owner.

O. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

SECTION 24. REPEALER 21 O.S. 1991, Sections 1040.9, 1040.10, 1040.12, 1040.19 and 1040.51, as last amended by Section 184, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 1999, Section 1040.51), are hereby repealed.

SECTION 25. This act shall become effective November 1, 2000.

Passed the House of Representatives the 7th day of March, 2000.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 2000.

President of the Senate