

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 46

By: Crutchfield of the Senate

and

McCarter and Piatt of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending Section 1, Chapter 7, O.S.L. 1992, as amended by Section 1, Chapter 66, O.S.L. 1995 (21 O.S. Supp. 2000, Section 1040.75), which relates to definitions of materials harmful to minors; modifying certain definition; amending Section 3, Chapter 7, O.S.L. 1992, as amended by Section 3, Chapter 66, O.S.L. 1995 (21 O.S. Supp. 2000, Section 1040.77), which relates to penalty for certain violations; increasing penalty for first or second offense; providing penalty for third or subsequent offense; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 1, Chapter 7, O.S.L. 1992, as amended by Section 1, Chapter 66, O.S.L. 1995 (21 O.S. Supp. 2000, Section 1040.75), is amended to read as follows:

Section 1040.75 As used in Sections 1040.75 through 1040.77 of this title:

1. "Minor" means any unmarried person under the age of eighteen (18) years;
2. "Harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:
 - a. the average person eighteen (18) years of age or older applying contemporary community standards would find

that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors, and

- b. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and
- c. the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors;

3. "Nudity" means the:

- a. showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering,
- b. showing of the female breast with less than a full opaque covering of any portion of the female breast below the top of the nipple, or
- c. depiction of covered male genitals in a discernibly turgid state;

4. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast;

5. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

6. "Sadomasochistic abuse" means flagellation or torture by or upon a person clothed or naked or the condition of being fettered,

bound or otherwise physically restrained on the part of one so clothed or naked;

7. "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, CD-ROM disk, Magnetic Disk Memory, Magnetic Tape Memory, ~~or~~ video tape, computer software or video game;

8. "CD-ROM" means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors;

9. "Magnetic Disk Memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes;

10. "Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;

11. "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration;

12. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- a. the character and content of any material or performance which is reasonably susceptible of examination by the defendant, and
- b. the age of the minor. However, an honest mistake, shall constitute an excuse from liability pursuant to this act if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor;

13. "Person" means any individual, partnership, association, corporation, or other legal entity of any kind; and

14. "A reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

SECTION 2. AMENDATORY Section 3, Chapter 7, O.S.L. 1992, as amended by Section 3, Chapter 66, O.S.L. 1995 (21 O.S. Supp. 2000, Section 1040.77), is amended to read as follows:

Section 1040.77 Any person convicted of violating any provision of Section 1040.76 of this title shall be guilty of a misdemeanor and shall be fined a sum not exceeding ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00) for the first or second offense. Any person convicted of a third or subsequent violation of any provision of Section 1040.76 of this title shall be guilty of a misdemeanor and shall be fined a sum not exceeding One Thousand Dollars (\$1,000.00). Each day that any violation of Section 1040.76 of this title occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by Section 1040.76 of this title shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by Section 1040.76 of this title shall constitute a single offense.

SECTION 3. This act shall become effective July 1, 2001.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.