

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1460

By: Peterson, Denney, Billy,
Tibbs, Sears and Pittman of
the House

7 and

8 Anderson, Jolley, Adelson,
9 Sparks and Garrison of the
10 Senate

11 CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to crimes and punishments; amending
13 21 O.S. 2001, Section 1024.1, which relates to child
14 pornography; clarifying scope of certain definition;
15 authorizing investigation of certain unlawful acts;
16 establishing authority to subpoena witnesses and
17 certain items; providing for examination of certain
18 items; granting exception; providing for witness
19 fees; prohibiting certain unlawful conduct; providing
20 penalty; providing for codification; and declaring an
21 emergency.

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

23 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1024.1, is
24 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

1 film, motion picture, videotape, photograph, negative, undeveloped
2 film, slide, photographic product, reproduction of a photographic
3 product, CD-ROM, magnetic disk memory, magnetic tape memory, play or
4 performance wherein a minor under the age of eighteen (18) years is
5 engaged in any act with a person, other than his or her spouse, of
6 sexual intercourse which is normal or perverted, in any act of anal
7 sodomy, in any act of sexual activity with an animal, in any act of
8 sadomasochistic abuse including, but not limited to, flagellation or
9 torture, or the condition of being fettered, bound or otherwise
10 physically restrained in the context of sexual conduct, in any act
11 of fellatio or cunnilingus, in any act of excretion in the context
12 of sexual conduct, in any lewd exhibition of the uncovered genitals
13 in the context of masturbation or other sexual conduct, or where the
14 lewd exhibition of the uncovered genitals, buttocks or, if such
15 minor is a female, the breast, has the purpose of sexual stimulation
16 of the viewer, or wherein a person under the age of eighteen (18)
17 years observes such acts or exhibitions.

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

20 1. "Obscene material" means and includes any representation,
21 performance, depiction or description of sexual conduct, whether in
22 any form or medium including still photographs, undeveloped
23 photographs, motion pictures, undeveloped film, videotape, CD-ROM,
24 magnetic disk memory, magnetic tape memory or a purely photographic

1 product or a reproduction of such product in any book, pamphlet,
2 magazine, or other publication, if said items contain the following
3 elements:

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

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

16 2. "Performance" means and includes any display, live or
17 recorded, in any form or medium;

- 18 3. "Sexual conduct" means and includes any of the following:
- 19 a. acts of sexual intercourse including any intercourse
20 which is normal or perverted, actual or simulated,
 - 21 b. acts of deviate sexual conduct, including oral and
22 anal sodomy,
 - 23 c. acts of masturbation,

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1 d. acts of sadomasochistic abuse including but not
2 limited to:

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

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

9 e. acts of excretion in a sexual context, or

10 f. acts of exhibiting human genitals or pubic areas; and

11 4. "Explicit child pornography" means material which a law
12 enforcement officer can immediately identify upon first viewing
13 without hesitation as child pornography.

14 The types of sexual conduct described in paragraph 3 of this
15 subsection are intended to include situations when, if appropriate
16 to the type of conduct, the conduct is performed alone or between
17 members of the same or opposite sex or between humans and animals in
18 an act of apparent sexual stimulation or gratification.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1024.5 of Title 21, unless there
21 is created a duplication in numbering, reads as follows:

22 A. When any person has engaged in, is engaged in, or is
23 attempting or conspiring to engage in any conduct constituting a
24 violation of any of the provisions of Section 1024.2 of Title 21 of

1 the Oklahoma Statutes, the Oklahoma Attorney General or any district
2 attorney in Oklahoma may conduct an investigation of the activity.
3 On approval of the district judge, the Attorney General or district
4 attorney, in accordance with the provisions of Section 258 of Title
5 22 of the Oklahoma Statutes, is authorized before the commencement
6 of any civil or criminal proceeding to subpoena witnesses, compel
7 their attendance, examine them under oath, or require the production
8 of any business papers or records by subpoena duces tecum. Evidence
9 collected pursuant to this section shall not be admissible in any
10 civil proceeding.

11 B. Any business papers and records subpoenaed by the Attorney
12 General or district attorney shall be available for examination by
13 the person who produced the material or by any duly authorized
14 representative of the person. Transcripts of oral testimony shall
15 be available for examination by the person who produced such
16 testimony and their counsel.

17 Except as otherwise provided for in this section, no business
18 papers, records, or transcripts or oral testimony, or copies of it,
19 subpoenaed by the Attorney General or district attorney shall be
20 available for examination by an individual other than another law
21 enforcement official without the consent of the person who produced
22 the business papers, records or transcript.

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1 C. All persons served with a subpoena by the Attorney General
2 or district attorney shall be paid the same fees and mileage as paid
3 witnesses in the courts of this state.

4 D. No person shall, with intent to avoid, evade, prevent, or
5 obstruct compliance in whole or in part by any person with any duly
6 served subpoena of the Attorney General or district attorney
7 pursuant to the provisions of this section, knowingly remove from
8 any place, conceal, withhold, destroy, mutilate, alter, or by any
9 other means falsify any business papers or records that are the
10 subject of the subpoena duces tecum.

11 E. Any person violating the provisions of this section shall,
12 upon conviction, be guilty of a misdemeanor punishable by
13 imprisonment in the county jail for not more than one (1) year, or
14 by a fine of not more than Five Hundred Dollars (\$500.00), or by
15 both such fine and imprisonment.

16 SECTION 3. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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21 52-1-7873 GRS 04/27/09

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