

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL 1020

By: Nichols, Gumm and Leftwich  
of the Senate

6 and

7 Terrill, Cooksey,  
8 McCullough, Reynolds, Cox,  
9 Fields, Ownbey, Kern,  
Wright (Harold), Dank,  
Peterson, Ortega and Nelson  
of the House

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11  
12 CONFERENCE COMMITTEE SUBSTITUTE

13 An Act relating to crimes and punishments;  
14 criminalizing pattern of domestic abuse; setting  
penalty; defining term; amending 21 O.S. 2001,  
15 Section 1024.1, which relates to definitions;  
16 modifying definition; amending 21 O.S. 2001, Section  
1040.8, as last amended by Section 1, Chapter 107,  
17 O.S.L. 2002 (21 O.S. Supp. 2008, Section 1040.8),  
which relates to distribution of obscene material or  
18 child pornography; adding prohibited material;  
providing additional penalty; requiring sex offender  
19 registration; amending Section 2, Chapter 438, O.S.L.  
2008 (21 O.S. Supp. 2008, Section 1040.12a), which  
20 relates to aggravated child pornography; increasing  
penalty; requiring sex offender registration;  
21 defining terms; prohibiting sex offenders from ice  
cream truck vending; setting penalty; requiring  
22 annual name search against sex offender registry for  
ice cream truck operators; directing certain records  
23 be maintained; requiring report of certain  
violations; setting misdemeanor penalty for certain  
24 violations; requiring certain individuals to possess  
certain statement while ice cream truck vending;  
setting misdemeanor penalty for violation; providing

1 for codification; providing an effective date; and  
2 declaring an emergency.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 644.1 of Title 21, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. Any person who commits domestic abuse, as defined by  
9 subsection C of Section 644 of Title 21 of the Oklahoma Statutes,  
10 and has a prior pattern of physical abuse shall be guilty of a  
11 felony, upon conviction, punishable by imprisonment in the custody  
12 of the Department of Corrections for a term of not more than ten  
13 (10) years or by a fine not exceeding Five Thousand Dollars  
14 (\$5,000.00) or by both such fine and imprisonment.

15 B. For purposes of this section, "prior pattern of physical  
16 abuse" means three or more separate incidences, unreported to law  
17 enforcement, occurring on different days, and where all incidences  
18 occurred within the previous six-month period, and each incident  
19 relates to an act constituting assault and battery or domestic abuse  
20 committed by the defendant against a current or former spouse, a  
21 present spouse of a former spouse, parents, a foster parent, a  
22 child, a person otherwise related by blood or marriage, a person  
23 with whom the defendant is in a dating relationship, an individual  
24 with whom the defendant has had a child, a person who formerly lived

1 in the same household as the defendant, a person living in the same  
2 household as the defendant, a current intimate partner or former  
3 intimate partner, or any combination of such persons, where proof is  
4 established by the sworn testimony of a third party who was a  
5 witness to the alleged physical abuse or by other admissible direct  
6 evidence that is independent of the testimony of the victim.

7 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1024.1, is  
8 amended to read as follows:

9 Section 1024.1 A. As used in Sections 1021, 1021.1 through  
10 1021.3, Sections 1022 through 1024, and Sections 1040.8 through  
11 1040.24 of this title, "child pornography" means and includes any  
12 film, motion picture, videotape, photograph, negative, undeveloped  
13 film, slide, photographic product, reproduction of a photographic  
14 product, CD-ROM, magnetic disk memory, magnetic tape memory,  
15 electronic or photo-optical format, play or performance wherein a  
16 minor under the age of eighteen (18) years is engaged in any act  
17 with a person, other than his or her spouse, of sexual intercourse  
18 which is normal or perverted, in any act of anal sodomy, in any act  
19 of sexual activity with an animal, in any act of sadomasochistic  
20 abuse including, but not limited to, flagellation or torture, or the  
21 condition of being fettered, bound or otherwise physically  
22 restrained in the context of sexual conduct, in any act of fellatio  
23 or cunnilingus, in any act of excretion in the context of sexual  
24 conduct, in any lewd exhibition of the uncovered genitals in the

1 context of masturbation or other sexual conduct, or where the lewd  
2 exhibition of the uncovered genitals has the purpose of sexual  
3 stimulation of the viewer, or wherein a person under the age of  
4 eighteen (18) years observes such acts or exhibitions.

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

7 1. "Obscene material" means and includes any representation,  
8 performance, depiction or description of sexual conduct, whether in  
9 any form or medium including still photographs, undeveloped  
10 photographs, motion pictures, undeveloped film, videotape, CD-ROM,  
11 magnetic disk memory, magnetic tape memory, electronic or photo-  
12 optical format, or a purely photographic product or a reproduction  
13 of such product in any book, pamphlet, magazine, or other  
14 publication or electronic or photo-optical format, if said items  
15 contain the following elements:

- 16 a. depictions or descriptions of sexual conduct which are  
17 patently offensive as found by the average person  
18 applying contemporary community standards,  
19 b. taken as a whole, have as the dominant theme an appeal  
20 to prurient interest in sex as found by the average  
21 person applying contemporary community standards, and  
22 c. a reasonable person would find the material or  
23 performance taken as a whole lacks serious literary,  
24

1 artistic, educational, political, or scientific  
2 purposes or value.

3 The standard for obscenity applied in this section shall not apply  
4 to child pornography;

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

7 3. "Sexual conduct" means and includes any of the following:

8 a. acts of sexual intercourse including any intercourse  
9 which is normal or perverted, actual or simulated,

10 b. acts of deviate sexual conduct, including oral and  
11 anal sodomy,

12 c. acts of masturbation,

13 d. acts of sadomasochistic abuse including but not  
14 limited to:

15 (1) flagellation or torture by or upon any person who  
16 is nude or clad in undergarments or in a costume  
17 which is of a revealing nature, or

18 (2) the condition of being fettered, bound, or  
19 otherwise physically restrained on the part of  
20 one who is nude or so clothed,

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

22 f. acts of exhibiting human genitals or pubic areas; and  
23  
24

1 4. "Explicit child pornography" means material which a law  
2 enforcement officer can immediately identify upon first viewing  
3 without hesitation as child pornography.

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

9 SECTION 3. AMENDATORY 21 O.S. 2001, Section 1040.8, as  
10 last amended by Section 1, Chapter 107, O.S.L. 2002 (21 O.S. Supp.  
11 2008, Section 1040.8), is amended to read as follows:

12 Section 1040.8 A. No person shall knowingly photograph, act  
13 in, pose for, model for, print, sell, offer for sale, give away,  
14 exhibit, publish, offer to publish, or otherwise distribute,  
15 display, or exhibit any book, magazine, story, pamphlet, paper,  
16 writing, card, advertisement, circular, print, picture, photograph,  
17 motion picture film, electronic video game or recording, image,  
18 cast, slide, figure, instrument, statue, drawing, presentation, or  
19 other article which is obscene material or child pornography, as  
20 defined in Section 1024.1 of this title. In the case of any  
21 unsolicited mailing of any of the material listed in this section,  
22 the offense is deemed complete from the time such material is  
23 deposited in any post office or delivered to any person with intent  
24 that it shall be forwarded. Also, unless preempted by federal law,

1 no unsolicited mail which is harmful to minors pursuant to Section  
2 1040.75 of this title shall be mailed to any person. The party  
3 mailing the materials specified in this section may be indicted and  
4 tried in any county wherein such material is deposited or delivered,  
5 or in which it is received by the person to whom it is addressed.

6 B. Any person who violates any provision of this section  
7 involving obscene materials, upon conviction, shall be guilty of a  
8 misdemeanor and shall be punished by imprisonment in the county jail  
9 for not more than one (1) year, or by a fine of not more than  
10 exceeding One Thousand Dollars (\$1,000.00), or by both such fine and  
11 imprisonment.

12 C. Any person who violates any provision of this section  
13 involving child pornography, upon conviction, shall be guilty of a  
14 felony and shall be punished by imprisonment in the custody of the  
15 Department of Corrections for not more than twenty (20) years, or by  
16 a fine of not exceeding Ten Thousand Dollars (\$10,000.00), or by  
17 both such fine and imprisonment. The violator, upon conviction,  
18 shall be required to register as a sex offender under the Sex  
19 Offenders Registration Act.

20 SECTION 4. AMENDATORY Section 2, Chapter 438, O.S.L.  
21 2008 (21 O.S. Supp. 2008, Section 1040.12a ), is amended to read as  
22 follows:

23 Section 1040.12a A. Any person who, with knowledge of its  
24 contents, possesses one hundred (100) or more separate materials

1 depicting child pornography shall be, upon conviction, guilty of  
2 aggravated possession of child pornography. The violator shall be  
3 punished by imprisonment in the custody of the Department of  
4 Corrections for a term not exceeding ~~twenty (20) years~~ life  
5 imprisonment and by a fine in an amount not more than Ten Thousand  
6 Dollars (\$10,000.00). The violator, upon conviction, shall be  
7 required to register as a sex offender under the Sex Offenders  
8 Registration Act.

9 B. For purposes of this section:

10 1. Multiple copies of the same identical material shall each be  
11 counted as a separate item;

12 2. The term "material" means the same definition provided by  
13 Section 1040.75 of Title 21 of the Oklahoma Statutes and, in  
14 addition, includes all digital and computerized images and  
15 depictions; and

16 3. The term "child pornography" means the same definition  
17 provided by Section 1040.80 of Title 21 of the Oklahoma Statutes  
18 and, in addition, includes sexual conduct, sexual excitement,  
19 sadomasochistic abuse, and performance of material harmful to minors  
20 where a minor is present or depicted as such terms are defined in  
21 Section 1040.75 of Title 21 of the Oklahoma Statutes.

22 SECTION 5. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 2100 of Title 21, unless there  
24 is created a duplication in numbering, reads as follows:

1 A. For purposes of this act:

2 1. "Ice cream" means any frozen dairy or water-based food  
3 product;

4 2. "Ice cream truck" means any motor vehicle used for selling,  
5 displaying or offering to sell ice cream or any other frozen dairy  
6 or frozen water-based food product; and

7 3. "Ice cream truck vending" means the selling, displaying or  
8 offering to sell ice cream, water-based food product or any other  
9 prepackaged food product from an ice cream truck.

10 SECTION 6. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 2100.1 of Title 21, unless there  
12 is created a duplication in numbering, reads as follows:

13 Any sex offender required to be registered pursuant to the  
14 Oklahoma Sex Offenders Registration Act who engages in ice cream  
15 truck vending, whether or not licensed in this state as a mobile  
16 food unit, shall be, upon conviction, punished by imprisonment in  
17 the custody of the Department of Corrections for a term up to two  
18 and one-half (2 1/2) years, or by a fine in an amount not exceeding  
19 One Thousand Dollars (\$1,000.00), or by both such fine and  
20 imprisonment. A sheriff or police officer may arrest without a  
21 warrant any person who the officer has probable cause to believe has  
22 violated the provisions of this section.

1           SECTION 7.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2100.2 of Title 21, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Any company engaged in the business of ice cream truck  
5 vending shall conduct an annual name search against the Oklahoma Sex  
6 Offender Registry for each ice cream truck operator prior to  
7 allowing such person to engage in the business of ice cream truck  
8 vending in this state. Each business shall maintain records or  
9 other proof that a name search was conducted on each ice cream truck  
10 operator, and each person searched has no requirement to register as  
11 a sex offender. Any business entity discovering that a person has  
12 operated, or has attempted to operate, an ice cream truck shall  
13 report such information to the district attorney. Any person who  
14 fails to report information of violations or to comply with records  
15 or name search requirements shall be guilty, upon conviction, of a  
16 misdemeanor.

17           B. Individuals engaged in the business of ice cream truck  
18 vending who are sole proprietors shall be required to sign, and have  
19 in the person's possession while operating an ice cream truck, a  
20 notarized statement signed under oath stating that the person is not  
21 required to register as a sex offender. The statement shall be  
22 renewed annually. Any person who fails to comply with the  
23 requirement to have a signed and notarized statement in the person's  
24

1 possession while operating an ice cream truck shall be guilty, upon  
2 conviction, of a misdemeanor.

3 SECTION 8. This act shall become effective July 1, 2009.

4 SECTION 9. It being immediately necessary for the preservation  
5 of the public peace, health and safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval.

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