

ENROLLED SENATE
BILL NO. 1020

By: Nichols, Gumm, Leftwich,
Garrison and Adelson of the
Senate

and

Terrill, Cooksey, McCullough,
Reynolds, Cox, Fields, Ownbey,
Kern, Wright (Harold), Dank,
Peterson, Ortega, Nelson,
Sears, Tibbs, McDaniel
(Randy), Osborn and Christian
of the House

An Act relating to crimes and punishments;
criminalizing pattern of domestic abuse; setting
penalty; defining term; amending 21 O.S. 2001,
Section 1024.1, as amended by Enrolled House Bill No.
1460 of the 1st Session of the 52nd Oklahoma
Legislature, which relates to definitions; modifying
definition; amending 21 O.S. 2001, Section 1040.8, as
last amended by Section 1, Chapter 107, O.S.L. 2002
(21 O.S. Supp. 2008, Section 1040.8), which relates
to distribution of obscene material or child
pornography; adding prohibited material; providing
additional penalty; requiring sex offender
registration; amending Section 2, Chapter 438, O.S.L.
2008 (21 O.S. Supp. 2008, Section 1040.12a), which
relates to aggravated child pornography; increasing
penalty; requiring sex offender registration;
defining terms; prohibiting sex offenders from ice
cream truck vending; setting penalty; requiring
annual name search against sex offender registry for
ice cream truck operators; directing certain records
be maintained; requiring report of certain
violations; setting misdemeanor penalty for certain
violations; requiring certain individuals to possess

certain statement while ice cream truck vending;
setting misdemeanor penalty for violation; providing
for codification; providing an effective date; and
declaring an emergency.

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

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

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

B. For purposes of this section, "prior pattern of physical
abuse" means three or more separate incidences, occurring on
different days, where all incidences occurred within the previous
six-month period, and each incident relates to an act constituting
assault and battery or domestic abuse committed by the defendant
against a current or former spouse, a present spouse of a former
spouse, parents, a foster parent, a child, a person otherwise
related by blood or marriage, a person with whom the defendant is in
a dating relationship, an individual with whom the defendant has had
a child, a person who formerly lived in the same household as the
defendant, a person living in the same household as the defendant, a
current intimate partner or former intimate partner, or any
combination of such persons, where proof is established by the sworn
testimony of a third party who was a witness to the alleged physical
abuse or by other admissible direct evidence that is independent of
the testimony of the victim.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1024.1, as
amended by Enrolled House Bill No. 1460 of the 1st Session of the
52nd Oklahoma Legislature, 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, electronic or photo-optical format, 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, buttocks or, if such minor is a female, the breast, 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, electronic or photo-optical format, or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication or electronic or photo-optical format, if said items contain the following elements:

- 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 section shall not apply to child pornography;

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

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

Section 1040.8 A. 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 material or child pornography, as defined in Section 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. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to Section 1040.75 of this title shall be mailed to any person. The party mailing the materials specified in this section 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.

B. Any person who violates any provision of this section involving obscene materials, 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 exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

C. Any person who violates any provision of this section involving child pornography, upon conviction, shall be guilty of a

felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than twenty (20) years, or by a fine of not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. The violator, upon conviction, shall be required to register as a sex offender under the Sex Offenders Registration Act.

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

Section 1040.12a A. Any person who, with knowledge of its contents, possesses one hundred (100) or more separate materials depicting child pornography shall be, upon conviction, guilty of aggravated possession of child pornography. The violator shall be punished by imprisonment in the custody of the Department of Corrections for a term not exceeding ~~twenty (20) years~~ life imprisonment and by a fine in an amount not more than Ten Thousand Dollars (\$10,000.00). The violator, upon conviction, shall be required to register as a sex offender under the Sex Offenders Registration Act.

B. For purposes of this section:

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

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

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

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

A. For purposes of this act:

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

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

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

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

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

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

A. Any company engaged in the business of ice cream truck vending shall conduct an annual name search against the Oklahoma Sex Offender Registry for each ice cream truck operator prior to allowing such person to engage in the business of ice cream truck vending in this state. Each business shall maintain records or other proof that a name search was conducted on each ice cream truck operator, and each person searched has no requirement to register as a sex offender. Any business entity discovering that a person has operated, or has attempted to operate, an ice cream truck shall

report such information to the district attorney. Any person who fails to report information of violations or to comply with records or name search requirements shall be guilty, upon conviction, of a misdemeanor.

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

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

SECTION 9. 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.

Passed the Senate the 22nd day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of May, 2009.

Presiding Officer of the House
of Representatives