STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2519 By: Nelson

COMMITTEE SUBSTITUTE

An Act relating to child pornography; amending 21 O.S. 2011, Section 1024.1, which relates to child pornography definitions; modifying certain definitions; amending 74 O.S. 2011, Section 151.1, which relates to the Internet Crimes Against Children unit of the Oklahoma State Bureau of Investigation; authorizing Director of the Oklahoma State Bureau of Investigation to enter into certain local cooperative agreements; providing for the appointment of reserve task force agents; establishing powers and duties of reserve task force agents; providing for the renewal, suspension and revocation of agreements; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1024.1, is amended to read as follows:

Section 1024.1 A. As used in Sections 1021, 1021.1 through ~~1021.3~~ 1021.4, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this title, "child pornography" means and includes any visual depiction or individual image stored or

contained in any format on any medium including, but not limited to, 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. Each visual depiction or individual image shall constitute a separate item and multiple copies of the same identical material shall each be counted as a separate item.

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 on any medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, ~~CD-ROM,~~ optical, magnetic ~~disk memory, magnetic tape memory, electronic~~ or ~~photo-optical format~~ solid-state storage, CD or DVD, 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 2. AMENDATORY 74 O.S. 2011, Section 151.1, is amended to read as follows:

Section 151.1 A. The Oklahoma State Bureau of Investigation shall establish an Internet Crimes Against Children (ICAC) unit for the primary purpose of investigating Internet crimes committed against children, including, but not limited to, offenses related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses. The unit shall additionally promote safe Internet use among children and their parents by various media or printed-material campaigns or by offering educational programs to schools or communities throughout this state. The Bureau shall employ sufficient employees to investigate and implement the ICAC unit.

B. The Director of the Oklahoma State Bureau of Investigation is hereby authorized to enter into local cooperative agreements with local law enforcement agencies for the purpose of appointing ICAC Affiliate Task Force Agents to assist the ICAC unit of the Bureau. ICAC Affiliate Task Force Agents shall be employees and commissioned law enforcement officers of the local law enforcement agency entering into agreement with the Oklahoma State Bureau of Investigation and shall not be employees of the Bureau. ICAC Affiliate Task Force Agents shall have general peace officer powers and the authority to arrest persons throughout the state for the purpose of investigating Internet crimes committed against children

including, but not limited to, offenses related to child pornography, solicitation of minors for pornography, prostitution or sex-related offenses. ICAC Affiliate Task Force Agents shall promote safe Internet use among children and parents of children by various media or printed-material campaigns or by offering educational programs to schools or communities throughout Oklahoma. The Director of the Bureau may renew, suspend or revoke any agreement appointing an ICAC Affiliate Task Force Agent at any time. ICAC Affiliate Task Force Agents serve solely at the discretion and will of the Director of the Oklahoma State Bureau of Investigation.

SECTION 3. This act shall become effective November 1, 2012.

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