

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 4013

By: Conley

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending
21 O.S. 2021, Section 1024.1, which relates to
obscenity definitions; modifying definition of
obscene material; adding definition; and providing an
effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 1024.1, is
amended to read as follows:

Section 1024.1 A. As used in Sections 1021, 1021.1 through
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, 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,

1 of sexual intercourse which is normal or perverted, in any act of
2 anal sodomy, in any act of sexual activity with an animal, in any
3 act of sadomasochistic abuse including, but not limited to,
4 flagellation or torture, or the condition of being fettered, bound
5 or otherwise physically restrained in the context of sexual conduct,
6 in any act of fellatio or cunnilingus, in any act of excretion in
7 the context of sexual conduct, in any lewd exhibition of the
8 uncovered genitals in the context of masturbation or other sexual
9 conduct, or where the lewd exhibition of the uncovered genitals,
10 buttocks or, if such minor is a female, the breast, has the purpose
11 of sexual stimulation of the viewer, or wherein a person under the
12 age of eighteen (18) years observes such acts or exhibitions. Each
13 visual depiction or individual image shall constitute a separate
14 item and multiple copies of the same identical material shall each
15 be counted as a separate item.

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

18 1. "Obscene material" means and includes any representation,
19 performance, depiction or description of sexual conduct, whether in
20 any form or on any medium including any book, article, magazine,
21 publication, or written matter of any kind, or any drawing, etching,
22 painting, still photographs, undeveloped photographs, motion
23 pictures, undeveloped film, videotape, optical, magnetic or solid-
24 state storage, CD or DVD, or a purely photographic product or a

1 reproduction of such product in any book, pamphlet, magazine, or
2 other publication or electronic or photo-optical format, if said
3 items contain the following 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,

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; and

5. "Obscene material harmful to minors" means and includes any representation, performance, pictures or literature, including any book, article, magazine, publication, or written matter of any kind, or any drawing, etching, painting, still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, optical, magnetic or 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 that depicts or describes or includes nudity, sexual conduct, sexual excitement or sadomasochistic abuse that:

- 1 a. predominantly appeals to the prurient, shameful or
2 morbid interest of minors,
3 b. is patently offensive to the prevailing standards in
4 the adult community with respect to what is suitable
5 material for minors, and
6 c. is utterly without redeeming social importance for
7 minors.

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

13 SECTION 2. This act shall become effective November 1, 2022.

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