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February 28, 2022

COMMITTEE SUBSTITUTE  
FOR

SENATE BILL NO. 9

By: Standridge

An Act relating to obscene material; amending 21 O.S. 2021, Section 1024.1, which relates to definitions; modifying qualifying elements of certain 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 1023, 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, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity

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

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

16 1. "Obscene material" means and includes any representation,  
17 performance, depiction or description of sexual conduct, whether in  
18 any form or on any medium including still photographs, undeveloped  
19 photographs, motion pictures, undeveloped film, videotape, optical,  
20 magnetic or solid-state storage, CD or DVD, or a purely photographic  
21 product or a reproduction of such product in any book, pamphlet,  
22 magazine, or other publication or electronic or photo-optical  
23 format, if said items contain the following elements:  
24

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

13 The standard for obscenity applied in subparagraphs b and c of this  
14 subsection shall not apply when an adult knowingly provides material  
15 that qualifies as obscene, as defined in this section, to a minor.

16 The standard for obscenity applied in this section shall not apply  
17 to child pornography;

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

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

- 21           a.    acts of sexual intercourse including any intercourse  
22                which is normal or perverted, actual or simulated,  
23           b.    acts of deviate sexual conduct, including oral and  
24                anal sodomy,

1 c. acts of masturbation,

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

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

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

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

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

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

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY  
22 February 28, 2022 - DO PASS AS AMENDED  
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