

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1976

By: Deevers

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2021, Sections 1024.1, 1024.2, and 1040.8, which relate to obscenity and child pornography; defining term; providing severability clause; authorizing civil action; providing elements of certain award; modifying elements of felony offense; providing certain construction; modifying elements of misdemeanor offense; 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 still photographs, undeveloped
21 photographs, motion pictures, undeveloped film, videotape, optical,
22 magnetic or solid-state storage, CD or DVD, or a purely photographic
23 product or a reproduction of such product in any book, pamphlet,
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1 magazine, or other publication or electronic or photo-optical
2 format, if said items contain the following elements:

- 3 a. depictions or descriptions of sexual conduct which are
4 patently offensive as found by the average person
5 applying contemporary community standards,
- 6 b. taken as a whole, have as the dominant theme an appeal
7 to prurient interest in sex as found by the average
8 person applying contemporary community standards, 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 this section shall not
14 apply to child pornography;

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

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

- 18 a. acts of sexual intercourse including any intercourse
19 which is normal or perverted, actual or simulated,
- 20 b. acts of deviate sexual conduct, including oral and
21 anal sodomy,
- 22 c. acts of masturbation,
- 23 d. acts of sadomasochistic abuse including but not
24 limited to:

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

4 (2) the condition of being fettered, bound, or
5 otherwise physically restrained on the part of
6 one who is nude or so clothed,

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

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

9 4. "Explicit child pornography" means material which a law
10 enforcement officer can immediately identify upon first viewing
11 without hesitation as child pornography.

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

17 5. As used in this title, "unlawful pornography" means any
18 visual depiction or individual image stored or contained in any
19 format on any medium including, but not limited to, film, motion
20 picture, videotape, photograph, negative, undeveloped film, slide,
21 photographic product, reproduction of a photographic product, play,
22 or performance in which a person is engaged in any of the following
23 acts with a person:

24 a. sexual intercourse which is normal or perverted,

- b. anal sodomy,
- c. sexual activity with an animal,
- d. sadomasochistic abuse,
- e. flagellation or torture,
- f. physical restraint such as binding or fettering in the context of sexual conduct,
- g. fellatio or cunnilingus,
- h. excretion in the context of sexual conduct,
- i. lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, and
- j. lewd exhibition of the uncovered genitals, buttocks, or, if such person is female, the breast, for the purpose of sexual stimulation of the viewer.

C. It is the intent of the Legislature that every provision, section, subsection, sentence, clause, phrase, or word in the definition of unlawful pornography is severable from each other, such that if any of the listed items is found by a court to be invalid or unconstitutional, the remaining items will be severed and may not be affected. All constitutionally valid applications of this section shall be severed from any application that a court finds to be invalid, leaving the valid applications in force, because it is the intent and priority of the Legislature that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this section to be an unconstitutional

1 restraint in a large or substantial fraction of relevant cases, the
2 applications that do not present an unconstitutional restraint shall
3 be severed from the remaining applications and shall remain in
4 force, and shall be treated as if the Legislature had enacted a
5 statute limited to the person, group of persons, or circumstances
6 for which the application of the statute does not present an
7 unconstitutional restraint on protected speech. If any court
8 declares or finds a provision of this section facially
9 unconstitutional, when discrete applications of that provision can
10 be enforced against a persons, group of persons, or circumstances
11 without violating the United States Constitution and Oklahoma
12 Constitution, those applications shall be severed from all remaining
13 applications of the provision, and the provision shall be
14 interpreted as if the Legislature had enacted a provision limited to
15 the person, group of persons, or circumstances for which the
16 provision's application will not violate the United States
17 Constitution and Oklahoma Constitution.

18 D. The Legislature further declares that it would have enacted
19 this section, and each provision, subsection, sentence, clause,
20 phrase, or word, and all constitutional applications of this
21 section, irrespective of the fact that any provision, subsection,
22 sentence, clause, phrase, or word, or application of this section,
23 were to be declared unconstitutional or to represent an
24 unconstitutional restraint. If any provision of this section is

1 found by any court to be unconstitutionally vague, then the
2 applications of that provision that do not present constitutional
3 vagueness problems shall be severed and remain in force. No court
4 may decline to enforce the severability requirements of this section
5 on the grounds that severance would rewrite the statute or involve
6 the court in legislative or lawmaking activity.

7 E. Each of the items of unlawful pornography in paragraph 5 of
8 subsection B are depictions of sexual conduct which are patently
9 offensive under contemporary community standards in this state, and
10 have as their dominant theme an appeal to prurient interest in sex
11 under contemporary community standards of this state, and may not be
12 produced or distributed within the state if they lack serious
13 literary, artistic, educational, political, or scientific purposes
14 or value.

15 F. Any person, other than an officer or employee of a state or
16 local governmental entity in this state, may bring a civil action
17 against any person who:

18 1. Produces or distributes unlawful pornography that lacks
19 serious literary, artistic, educational, political, or scientific
20 purposes or value;

21 2. Knowingly engages in conduct that aids or abets the
22 production or distribution of unlawful pornography that lacks
23 serious literary, artistic, educational, political, or scientific
24 purposes or value; or

1 3. Intends to engage in the conduct provided for in paragraphs
2 1 and 2 of this subsection.

3 G. If a claimant prevails in an action brought under this
4 section, the court shall award:

5 1. Injunctive relief sufficient to prevent the defendant from
6 violating this section or engaging in acts that aid or abet
7 violations of this section;

8 2. Statutory damages not less than Ten Thousand Dollars
9 (\$10,000.00) for each image or depiction produced or distributed
10 within this state; and

11 3. Court costs and attorney fees.

12 H. Notwithstanding any other provision of law, a court may not
13 award court costs or attorney fees to a defendant in an action
14 brought under this section.

15 SECTION 2. AMENDATORY 21 O.S. 2021, Section 1024.2, is
16 amended to read as follows:

17 Section 1024.2. It shall be unlawful for any person to buy,
18 procure, view, or possess child pornography ~~in violation of Sections~~
19 or obscene materials or to distribute any unlawful pornography that
20 lacks serious literary, artistic, educational, political, or
21 scientific purposes or value as defined in Section 1024.1 through
22 ~~1024.4~~ of this title. Such person shall, upon conviction, be guilty
23 of a felony and shall be imprisoned for a period of punishable by
24 imprisonment in the custody of the Department of Corrections for not

1 more than twenty (20) years or a fine ~~up to, but not exceeding,~~ not
2 to exceed Twenty-five Thousand Dollars (\$25,000.00) or by both such
3 fine and imprisonment. This shall not be construed to prevent
4 spouses from sending images of a sexual nature to each other.

5 SECTION 3. AMENDATORY 21 O.S. 2021, Section 1040.8, is
6 amended to read as follows:

7 Section 1040.8. A. No person shall knowingly photograph, act
8 in, pose for, model for, print, sell, offer for sale, give away,
9 exhibit, publish, offer to publish, or otherwise distribute,
10 display, or exhibit any book, magazine, story, pamphlet, paper,
11 writing, card, advertisement, circular, print, picture, photograph,
12 motion picture film, electronic video game or recording, image,
13 cast, slide, figure, instrument, statue, drawing, presentation, or
14 other article which is obscene material, unlawful pornography, or
15 child pornography, as defined in Section 1024.1 of this title. In
16 the case of any unsolicited mailing of any of the material listed in
17 this section, the offense is deemed complete from the time such
18 material is deposited in any post office or delivered to any person
19 with intent that it shall be forwarded. Also, unless preempted by
20 federal law, no unsolicited mail which is harmful to minors pursuant
21 to Section 1040.75 of this title shall be mailed to any person. The
22 party mailing the materials specified in this section may be
23 indicted and tried in any county wherein such material is deposited
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1 or delivered, or in which it is received by the person to whom it is
2 addressed.

3 B. Any person who violates any provision of this section
4 involving obscene materials or unlawful pornography, upon
5 conviction, shall be guilty of a misdemeanor and shall be punished
6 by imprisonment in the county jail for not more than one (1) year,
7 or by a fine of not less than Two Thousand Dollars (\$2,000.00), or
8 by both such fine and imprisonment.

9 C. Any person who violates any provision of this section
10 involving child pornography, upon conviction, shall be guilty of a
11 felony and shall be punished by imprisonment in the custody of the
12 Department of Corrections for not less than three (3) years and not
13 more than twenty (20) years, or by a fine of not less than Ten
14 Thousand Dollars (\$10,000.00), or by both such fine and
15 imprisonment. Any person convicted of a second or subsequent
16 violation shall, upon conviction, be punished by imprisonment in the
17 custody of the Department of Corrections for not less than ten (10)
18 years and not more than thirty (30) years, or by a fine of not less
19 than Twenty Thousand Dollars (\$20,000.00), or by both such fine and
20 imprisonment. The violator, upon conviction, shall be required to
21 register as a sex offender under the Sex Offenders Registration Act.

22 SECTION 4. This act shall become effective November 1, 2024.

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