

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2535

By: Humphrey

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5
6 AS INTRODUCED

7 An Act relating to obscene material; amending 21 O.S.
8 2021, Section 1024.1, which relates to definitions;
9 modifying elements of certain definition; and
10 providing an effective date.

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

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

15 Section 1024.1 A. As used in Sections 1021, 1021.1 through
16 1021.4, Sections 1022 ~~through 1024~~ and 1023, and Sections 1040.8
17 through 1040.24 of this title, "child pornography" means and
18 includes any visual depiction or individual image stored or
19 contained in any format on any medium including, but not limited to,
20 film, motion picture, videotape, photograph, negative, undeveloped
21 film, slide, photographic product, reproduction of a photographic
22 product, play or performance wherein a minor under the age of
23 eighteen (18) years is engaged in any act with a person, other than
24 his or her spouse, of sexual intercourse which is normal or

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

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

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

- 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 paragraph shall not apply when an adult knowingly provides material
15 that qualifies as obscene material, as defined in this section, to a
16 minor. The standard for obscenity applied in this section shall not
17 apply 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, 2023.

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