

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3865

By: Fugate

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1021, Sections 1021, 1024.1 and 1040.75, which relate to the Oklahoma Law on Obscenity and Child Pornography; expanding scope of crime to include materials and pornography generated via artificial intelligence; modifying certain terms to include artificial intelligence (AI)-generated images; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 1021, is amended to read as follows:

Section 1021. A. Every person who willfully and knowingly either:

1. Lewdly exposes his or her person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby; provided, however, for purposes of this section, a person alleged to have committed an act of public urination shall be prosecuted pursuant to Section 22 of this title unless such act was accompanied with another act that violates

1 paragraphs 2 through 4 of this subsection and shall not be subject
2 to registration under the Sex Offenders Registration Act;

3 2. Procures, counsels, or assists any person to expose such
4 person, or to make any other exhibition of such person to public
5 view or to the view of any number of persons, for the purpose of
6 sexual stimulation of the viewer;

7 3. Writes, composes, stereotypes, prints, photographs, designs,
8 generates by artificial intelligence (AI), copies, draws, engraves,
9 paints, molds, cuts, or otherwise prepares, publishes, sells,
10 distributes, keeps for sale, knowingly downloads on a computer, or
11 exhibits any obscene material or child pornography; or

12 4. Makes, prepares, cuts, sells, gives, loans, distributes,
13 keeps for sale, or exhibits any disc record, metal, plastic, or wax,
14 wire or tape recording, or any type of obscene material or child
15 pornography,

16 shall be guilty, upon conviction, of a felony and shall be punished
17 by the imposition of a fine of not less than Five Hundred Dollars
18 (\$500.00) nor more than Twenty Thousand Dollars (\$20,000.00) or by
19 imprisonment for not less than thirty (30) days nor more than ten
20 (10) years, or by both such fine and imprisonment.

21 B. Every person who:

22 1. Willfully solicits or aids a minor child to perform; or
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1 2. Shows, exhibits, loans, or distributes to a minor child any
2 obscene material or child pornography for the purpose of inducing
3 said minor to participate in,
4 any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this
5 section shall be guilty of a felony, upon conviction, and shall be
6 punished by imprisonment in the custody of the Department of
7 Corrections for not less than ten (10) years nor more than thirty
8 (30) years, except when the minor child is under twelve (12) years
9 of age at the time the offense is committed, and in such case the
10 person shall, upon conviction, be punished by imprisonment in the
11 custody of the Department of Corrections for not less than twenty-
12 five (25) years.

13 C. Persons convicted under this section shall not be eligible
14 for a deferred sentence.

15 D. Except for persons sentenced to life or life without parole,
16 any person sentenced to imprisonment for two (2) years or more for a
17 violation of this section shall be required to serve a term of post-
18 imprisonment supervision pursuant to subparagraph f of paragraph 1
19 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
20 under conditions determined by the Department of Corrections. The
21 jury shall be advised that the mandatory post-imprisonment
22 supervision shall be in addition to the actual imprisonment.

23 E. For purposes of this section, ~~"downloading on a computer":~~
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1 1. "Downloading on a computer" means electronically
2 transferring an electronic file from one computer or electronic
3 media to another computer or electronic media; and

4 2. "Generates by artificial intelligence (AI)" means AI-
5 generating technology that can produce various types of content
6 including text, images, videos, audio clips or synthetic data.

7 SECTION 2. AMENDATORY 21 O.S. 2021, Section 1024.1, is
8 amended to read as follows:

9 Section 1024.1 A. As used in Sections 1021, 1021.1 through
10 1021.4, Sections 1022 ~~through 1024~~ and 1023, and Sections 1040.8
11 through 1040.24 of this title, "child pornography" means and
12 includes any visual depiction or individual image stored or
13 contained in any format on any medium including, but not limited to,
14 film, motion picture, videotape, photograph, negative, undeveloped
15 film, slide, photographic product, reproduction of a photographic
16 product, artificial intelligence (AI)-generated image, play or
17 performance wherein a minor under the age of eighteen (18) years is
18 engaged in any act with a person, other than his or her spouse, of
19 sexual intercourse which is normal or perverted, in any act of anal
20 sodomy, in any act of sexual activity with an animal, in any act of
21 sadomasochistic abuse including, but not limited to, flagellation or
22 torture, or the condition of being fettered, bound or otherwise
23 physically restrained in the context of sexual conduct, in any act
24 of fellatio or cunnilingus, in any act of excretion in the context
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1 of sexual conduct, in any lewd exhibition of the uncovered genitals
2 in the context of masturbation or other sexual conduct, or where the
3 lewd exhibition of the uncovered genitals, buttocks or, if such
4 minor is a female, the breast, has the purpose of sexual stimulation
5 of the viewer, or wherein a person under the age of eighteen (18)
6 years observes such acts or exhibitions. Each visual depiction or
7 individual image shall constitute a separate item and multiple
8 copies of the same identical material shall each be counted as a
9 separate item.

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

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

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

8 The standard for obscenity applied in this section shall not apply
9 to child pornography;

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

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

- 13 a. acts of sexual intercourse including any intercourse
14 which is normal or perverted, actual or simulated,
15 b. acts of deviate sexual conduct, including oral and
16 anal sodomy,
17 c. acts of masturbation,
18 d. acts of sadomasochistic abuse including but not
19 limited to:

- 20 (1) flagellation or torture by or upon any person who
21 is nude or clad in undergarments or in a costume
22 which is of a revealing nature, or
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1 (2) the condition of being fettered, bound, or
2 otherwise physically restrained on the part of
3 one who is nude or so clothed,

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

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

6 4. "Explicit child pornography" means material which a law
7 enforcement officer can immediately identify upon first viewing
8 without hesitation as child pornography; and

9 5. "Artificial intelligence (AI)-generated image" means an image
10 created through the use of AI programs.

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

16 SECTION 3. AMENDATORY 21 O.S. 2021, Section 1040.75, is
17 amended to read as follows:

18 Section 1040.75 As used in Sections 1040.75 through 1040.77 of
19 this title:

20 1. "Minor" means any unmarried person under the age of eighteen
21 (18) years;

22 2. "Harmful to minors" means:

23 a. that quality of any description, exhibition,
24 presentation or representation, in whatever form, of
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1 nudity, sexual conduct, sexual excitement, or
2 sadosochistic abuse when the material or
3 performance, taken as a whole, has the following
4 characteristics:

5 (1) the average person eighteen (18) years of age or
6 older applying contemporary community standards
7 would find that the material or performance has a
8 predominant tendency to appeal to a prurient
9 interest in sex to minors, and

10 (2) the average person eighteen (18) years of age or
11 older applying contemporary community standards
12 would find that the material or performance
13 depicts or describes nudity, sexual conduct,
14 sexual excitement or sadosochistic abuse in a
15 manner that is patently offensive to prevailing
16 standards in the adult community with respect to
17 what is suitable for minors, and

18 (3) the material or performance lacks serious
19 literary, scientific, medical, artistic, or
20 political value for minors, or

21 b. any description, exhibition, presentation or
22 representation, in whatever form, of inappropriate
23 violence;

1 3. "Inappropriate violence" means any description or
2 representation, in an interactive video game or computer software,
3 of violence which, taken as a whole, has the following
4 characteristics:

5 a. the average person eighteen (18) years of age or older
6 applying contemporary community standards would find
7 that the interactive video game or computer software
8 is patently offensive to prevailing standards in the
9 adult community with respect to what is suitable for
10 minors, and

11 b. the interactive video game or computer software lacks
12 serious literary, scientific, medical, artistic, or
13 political value for minors based on, but not limited
14 to, the following criteria:

15 (1) is glamorized or gratuitous,

16 (2) is graphic violence used to shock or stimulate,

17 (3) is graphic violence that is not contextually
18 relevant to the material,

19 (4) is so pervasive that it serves as the thread
20 holding the plot of the material together,

21 (5) trivializes the serious nature of realistic
22 violence,

23 (6) does not demonstrate the consequences or effects
24 of realistic violence,
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1 (7) uses brutal weapons designed to inflict the
2 maximum amount of pain and damage,

3 (8) endorses or glorifies torture or excessive
4 weaponry, or

5 (9) depicts lead characters who resort to violence
6 freely;

7 4. "Nudity" means the:

8 a. showing of the human male or female genitals, pubic
9 area, or buttocks with less than a full opaque
10 covering,

11 b. showing of the female breast with less than a full
12 opaque covering of any portion of the female breast
13 below the top of the nipple, or

14 c. depiction of covered male genitals in a discernibly
15 turgid state;

16 5. "Sexual conduct" means acts of masturbation, homosexuality,
17 sexual intercourse, or physical contact with a person's clothed or
18 unclothed genitals, pubic area, buttocks, or, if such person be a
19 female, breast;

20 6. "Sexual excitement" means the condition of human male or
21 female genitals when in a state of sexual stimulation or arousal;

22 7. "Sadomasochistic abuse" means flagellation or torture by or
23 upon a person clothed or naked or the condition of being fettered,
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1 bound or otherwise physically restrained on the part of one so
2 clothed or naked;

3 8. "Material" means any book, magazine, newspaper, pamphlet,
4 poster, print, picture, figure, image, artificial intelligence (AI)-
5 generated image, description, motion picture film, record, recording
6 tape, CD-ROM disk, Magnetic Disk Memory, Magnetic Tape Memory, video
7 tape, computer software or video game;

8 9. "CD-ROM" means a compact disk with read only memory which
9 has the capacity to store audio, video and written materials and may
10 be used by computer to play or display materials harmful to minors;

11 10. "Magnetic Disk Memory" means a memory system that stores
12 and retrieves binary data on record-like metal or plastic disks
13 coated with a magnetic material, including but not limited to floppy
14 diskettes;

15 11. "Magnetic Tape Memory" means a memory system that stores
16 and retrieves binary data on magnetic recording tape;

17 12. "Performance" means any motion picture, film, video tape,
18 played record, phonograph or tape, preview, trailer, play, show,
19 skit, dance, or other exhibition performed or presented to or before
20 an audience of one or more, with or without consideration;

21 13. "Knowingly" means having general knowledge of, or reason to
22 know, or a belief or ground for belief which warrants further
23 inspection or inquiry of both:
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- 1 a. the character and content of any material or
2 performance which is reasonably susceptible of
3 examination by the defendant, and
4 b. the age of the minor. However, an honest mistake,
5 shall constitute an excuse from liability pursuant to
6 this act if the defendant made a reasonable bona fide
7 attempt to ascertain the true age of such minor;

8 14. "Person" means any individual, partnership, association,
9 corporation, or other legal entity of any kind; ~~and~~

10 15. "A reasonable bona fide attempt" means an attempt to
11 ascertain the true age of the minor by requiring production of a
12 driver license, marriage license, birth certificate or other
13 governmental or educational identification card or paper and not
14 relying solely on the oral allegations or apparent age of the minor;
15 and

16 16. "Artificial intelligence (AI)-generated image" means an
17 image created through the use of AI programs.

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

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