

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2535

By: Williams and **Humphrey**

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8 COMMITTEE SUBSTITUTE

9 An Act relating to obscene material; amending 21 O.S.
10 2021, Section 1024.1, which relates to definitions;
11 providing statutory reference to certain definition;
12 and providing an effective date.

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

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

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

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

12 5. "Harmful to minors" shall have the same definition as
13 provided for in paragraph 2 of Section 1040.75 of this title.

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

19 SECTION 2. This act shall become effective November 1, 2023.

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21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
22 03/01/2023 - DO PASS, As Amended and Coauthored.