

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 4013

By: Conley

7  
8                                   COMMITTEE SUBSTITUTE

9                   An Act relating to crimes and punishments; amending  
10                   21 O.S. 2021, Section 1024.1, which relates to  
11                   obscenity definitions; modifying definition of  
12                   obscene material; adding definition; and providing an  
13                   effective date.

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

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

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

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

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

19 1. "Obscene material" means and includes any representation,  
20 performance, depiction or description of sexual conduct, whether in  
21 any form or on any medium including any book, article, magazine,  
22 publication, or written matter of any kind, or any drawing, etching,  
23 painting, still photographs, undeveloped photographs, motion  
24 pictures, undeveloped film, videotape, optical, magnetic or solid-

1 state storage, CD or DVD, or a purely photographic product or a  
2 reproduction of such product in any book, pamphlet, magazine, or  
3 other publication or electronic or photo-optical format, if said  
4 items contain the following elements:

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

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

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

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

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

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

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

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

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

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

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

14 5. "Obscene material harmful to minors" means and includes any  
15 representation, performance, pictures or literature, including any  
16 book, article, magazine, publication, or written matter of any kind,  
17 or any drawing, etching, painting, still photographs, undeveloped  
18 photographs, motion pictures, undeveloped film, videotape, optical,  
19 magnetic or solid state storage, CD or DVD, or a purely photographic  
20 product or a reproduction of such product in any book, pamphlet,  
21 magazine, or other publication or electronic or photo-optical format  
22 that depicts or describes or includes nudity, sexual conduct, sexual  
23 excitement or sadomasochistic abuse that:

- 1           a. predominantly appeals to the prurient, shameful or  
2           morbid interest of minors,  
3           b. is patently offensive to the prevailing standards in  
4           the adult community with respect to what is suitable  
5           material for minors, and  
6           c. is utterly without redeeming social importance for  
7           minors.

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

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

14  
15           COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated  
16           02/17/2022 - DO PASS, As Amended.