

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 4104

By: Menz

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2021, Sections 1021.4, 1024.1, 1040.13b and 1040.75, which relate to the Oklahoma Law on Obscenity and Child Pornography; expanding scope of certain crimes to include deceptive audio or visual media; defining term; making certain acts unlawful; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 1021.4, is amended to read as follows:

Section 1021.4 A. Any commercial film and photographic print processor or commercial computer technician who has knowledge of or observes, within the scope of such person's professional capacity or employment, any film, photograph, video tape, negative, or slide, or any computer file, recording, CD-Rom, magnetic disk memory, magnetic tape memory, picture, graphic ~~or~~, image, or deceptive audio or visual media that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CDs, DVDs and thumbdrives, whether digital, analog or other means and

1 whether directly viewable, compressed or encoded depicting a child  
2 under the age of eighteen (18) years engaged in an act of sexual  
3 conduct as defined in Section 1024.1 of this title shall immediately  
4 or as soon as possible report by telephone such instance of  
5 suspected child abuse or child pornography to the law enforcement  
6 agency having jurisdiction over the case and shall prepare and send  
7 a written report of the incident with an attached copy of such  
8 material, within thirty-six (36) hours after receiving the  
9 information concerning the incident.

10 For the purposes of this section:

11 1. "Commercial film and photographic print processor" means any  
12 person who develops exposed photographic film into negatives,  
13 slides, or prints, or who makes prints from negatives or slides, for  
14 compensation. The term shall also include any employee of such a  
15 person but shall not include a person who develops film or makes  
16 prints for a public agency; ~~and~~

17 2. "Commercial computer technician" means any person who  
18 repairs, installs, or otherwise services any computer including, but  
19 not limited to, any component part, device, memory storage or  
20 recording mechanism, auxiliary storage, recording or memory  
21 capacity, or any other materials relating to operation and  
22 maintenance of a computer or computer network or system, for  
23 compensation. The term shall also include any employee of such  
24 person; and  
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1        3. "Deceptive audio or visual media" means any video recording,  
2 motion picture film, sound recording, electronic image, or  
3 photograph, or any technological representation of speech or conduct  
4 substantially derivative thereof that appears to authentically  
5 depict any speech or conduct of a person who did not, in fact,  
6 engage in the speech or conduct and the production of which was  
7 substantially dependent upon technical means, rather than the  
8 ability of another person to physically or verbally impersonate the  
9 person.

10        B. Any person who violates the provisions of this section  
11 shall, upon conviction, ~~shall~~ be guilty of a misdemeanor and shall  
12 be punished by the imposition of a fine not to exceed Five Hundred  
13 Dollars (\$500.00) or by imprisonment in the county jail not to  
14 exceed one (1) year, or both such fine and imprisonment.

15        C. Nothing in this section shall be construed to require or  
16 authorize any person to act outside the scope of such person's  
17 professional capacity or employment by searching for prohibited  
18 materials or media.

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

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

22 B. As used in Sections 1021 through 1024.4 and Sections 1040.8  
23 through 1040.24 of this title:  
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1           1. "Obscene material" means and includes any representation,  
2 performance, depiction or description of sexual conduct, whether in  
3 any form or on any medium including still photographs, undeveloped  
4 photographs, motion pictures, undeveloped film, videotape, optical,  
5 magnetic or solid-state storage, CD or DVD, or a purely photographic  
6 product or a reproduction of such product in any book, pamphlet,  
7 magazine, ~~or~~ other publication or electronic or photo-optical  
8 format, or deceptive audio or visual media, if said items contain  
9 the following elements:

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

20 The standard for obscenity applied in this section shall not apply  
21 to child pornography;

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

24           3. "Sexual conduct" means and includes any of the following:  
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- 1 a. acts of sexual intercourse including any intercourse  
2 which is normal or perverted, actual or simulated,  
3 b. acts of deviate sexual conduct, including oral and  
4 anal sodomy,  
5 c. acts of masturbation,  
6 d. acts of sadomasochistic abuse including but not  
7 limited to:  
8 (1) flagellation or torture by or upon any person who  
9 is nude or clad in undergarments or in a costume  
10 which is of a revealing nature, or  
11 (2) the condition of being fettered, bound, or  
12 otherwise physically restrained on the part of  
13 one who is nude or so clothed,  
14 e. acts of excretion in a sexual context, or  
15 f. acts of exhibiting human genitals or pubic areas; ~~and~~

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

19 5. "Deceptive audio or visual media" means any video recording,  
20 motion picture film, sound recording, electronic image, or  
21 photograph, or any technological representation of speech or conduct  
22 substantially derivative thereof that appears to authentically  
23 depict any speech or conduct of a person who did not, in fact,  
24 engage in the speech or conduct and the production of which was  
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1 substantially dependent upon technical means, rather than the  
2 ability of another person to physically or verbally impersonate the  
3 person.

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

9 SECTION 3. AMENDATORY 21 O.S. 2021, Section 1040.13b, is  
10 amended to read as follows:

11 Section 1040.13b A. As used in this section:

12 1. "Deceptive audio or visual media" means any video recording,  
13 motion picture film, sound recording, electronic image, or  
14 photograph, or any technological representation of speech or conduct  
15 substantially derivative thereof that appears to authentically  
16 depict any speech or conduct of a person who did not, in fact,  
17 engage in the speech or conduct and the production of which was  
18 substantially dependent upon technical means, rather than the  
19 ability of another person to physically or verbally impersonate the  
20 person;

21 2. "Image" includes a photograph, film, videotape, digital  
22 recording or other depiction or portrayal of an object, including a  
23 human body;

1       ~~2.~~ 3. "Intimate parts" means the fully unclothed, partially  
2 unclothed or transparently clothed genitals, pubic area or female  
3 adult nipple; and

4       ~~3.~~ 4. "Sexual act" means sexual intercourse including genital,  
5 anal or oral sex.

6       B. A person commits nonconsensual dissemination of private  
7 sexual images when he or she:

8       1. Intentionally disseminates an image of another person:

9           a. who is at least eighteen (18) years of age,

10          b. who is identifiable from the image itself or  
11 information displayed in connection with the image,  
12 and

13          c. who is engaged in a sexual act or whose intimate parts  
14 are exposed, in whole or in part;

15       2. Disseminates the image with the intent to harass, intimidate  
16 or coerce the person, or under circumstances in which a reasonable  
17 person would know or understand that dissemination of the image  
18 would harass, intimidate or coerce the person;

19       3. Obtains the image under circumstances in which a reasonable  
20 person would know or understand that the image was to remain  
21 private; and

22       4. Knows or a reasonable person should have known that the  
23 person in the image has not consented to the dissemination.  
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1 C. A person commits nonconsensual dissemination of deceptive  
2 audio or visual media when he or she:

3 1. Intentionally disseminates deceptive audio or visual media  
4 of another person:

5 a. who is at least eighteen (18) years of age,

6 b. who is identifiable from the deceptive audio or visual  
7 media, and

8 c. who is engaged in a sexual act or whose intimate parts  
9 are exposed, in whole or in part;

10 2. Disseminates the deceptive audio or visual media with the  
11 intent to harass, intimidate or coerce the person, or under  
12 circumstances in which a reasonable person would know or understand  
13 that dissemination of the image would harass, intimidate or coerce  
14 the person; and

15 3. Knows or a reasonable person should have known that the  
16 person in the deceptive audio or visual media has not consented to  
17 the dissemination.

18 D. The provisions of this section shall not apply to the  
19 intentional dissemination of an image or deceptive audio or visual  
20 media of another identifiable person who is engaged in a sexual act  
21 or whose intimate parts are exposed when:

22 1. The dissemination is made for the purpose of a criminal  
23 investigation that is otherwise lawful;

1           2. The dissemination is for the purpose of, or in connection  
2 with, the reporting of unlawful conduct;

3           3. The images involve voluntary exposure in public or  
4 commercial settings; or

5           4. The dissemination serves a lawful purpose.

6           ~~D.~~ E. Nothing in this section shall be construed to impose  
7 liability upon the following entities solely as a result of content  
8 or information provided by another person:

9           1. An interactive computer service, as defined in 47 U.S.C.,  
10 Section 230(f)(2);

11           2. A wireless service provider, as defined in Section 332(d) of  
12 the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq.,  
13 Federal Communications Commission rules, and the Omnibus Budget  
14 Reconciliation Act of 1993, Pub. L. No. 103-66; or

15           3. A telecommunications network or broadband provider.

16           ~~E.~~ F. A person convicted under this section is subject to the  
17 forfeiture provisions in Section 1040.54 of this title.

18           ~~F.~~ G. Any person who violates the provisions of this section  
19 shall, upon conviction, be guilty of a misdemeanor punishable by  
20 imprisonment in a county jail for not more than one (1) year or by a  
21 fine of not more than One Thousand Dollars (\$1,000.00), or by both  
22 such fine and imprisonment.

23           ~~G.~~ H. Any person who violates the provisions of this section  
24 and who gains or attempts to gain financially or who gains or  
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1 attempts to gain anything of value as a result of the nonconsensual  
2 dissemination of private sexual images, or deceptive audio or visual  
3 media shall, upon conviction, be guilty of a felony punishable by  
4 imprisonment in the custody of the Department of Corrections for not  
5 more than four (4) years. A second or subsequent violation of this  
6 subsection shall be a felony punishable by imprisonment in the  
7 custody of the Department of Corrections for not more than ten (10)  
8 years and the offender shall be required to register as a sex  
9 offender under the Sex Offenders Registration Act.

10 ~~H.~~ I. The state shall not have the discretion to file a  
11 misdemeanor charge, pursuant to Section 234 of Title 22 of the  
12 Oklahoma Statutes, for a violation pursuant to subsection ~~G~~ H of  
13 this section.

14 ~~I.~~ J. The court shall have the authority to order the defendant  
15 to remove the disseminated image, or deceptive audio or visual media  
16 should the court find it is in the power of the defendant to do so.

17 SECTION 4. AMENDATORY 21 O.S. 2021, Section 1040.75, is  
18 amended to read as follows:

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

- 21 1. "Minor" means any unmarried person under the age of eighteen  
22 (18) years;
- 23 2. "Harmful to minors" means:

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

- 7 (1) the average person eighteen (18) years of age or  
8 older applying contemporary community standards  
9 would find that the material or performance has a  
10 predominant tendency to appeal to a prurient  
11 interest in sex to minors, and  
12 (2) the average person eighteen (18) years of age or  
13 older applying contemporary community standards  
14 would find that the material or performance  
15 depicts or describes nudity, sexual conduct,  
16 sexual excitement or sadomasochistic abuse in a  
17 manner that is patently offensive to prevailing  
18 standards in the adult community with respect to  
19 what is suitable for minors, and  
20 (3) the material or performance lacks serious  
21 literary, scientific, medical, artistic, or  
22 political value for minors, or  
23  
24  
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1           b. any description, exhibition, presentation or  
2           representation, in whatever form, of inappropriate  
3           violence;

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

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

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

18           (1) is glamorized or gratuitous,

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

20           (3) is graphic violence that is not contextually  
21           relevant to the material,

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

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- 1 (5) trivializes the serious nature of realistic
- 2 violence,
- 3 (6) does not demonstrate the consequences or effects
- 4 of realistic violence,
- 5 (7) uses brutal weapons designed to inflict the
- 6 maximum amount of pain and damage,
- 7 (8) endorses or glorifies torture or excessive
- 8 weaponry, or
- 9 (9) depicts lead characters who resort to violence
- 10 freely;

11 4. "Nudity" means the:

- 12 a. showing of the human male or female genitals, pubic
- 13 area, or buttocks with less than a full opaque
- 14 covering,
- 15 b. showing of the female breast with less than a full
- 16 opaque covering of any portion of the female breast
- 17 below the top of the nipple, or
- 18 c. depiction of covered male genitals in a discernibly
- 19 turgid state;

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

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

3           7. "Sadomasochistic abuse" means flagellation or torture by or  
4 upon a person clothed or naked or the condition of being fettered,  
5 bound or otherwise physically restrained on the part of one so  
6 clothed or naked;

7           8. "Material" means any book, magazine, newspaper, pamphlet,  
8 poster, print, picture, figure, image, description, motion picture  
9 film, record, recording tape, CD-ROM disk, Magnetic Disk Memory,  
10 Magnetic Tape Memory, video tape, computer software ~~or~~, video game,  
11 or deceptive audio or visual media;

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

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

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

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

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1 13. "Knowingly" means having general knowledge of, or reason to  
2 know, or a belief or ground for belief which warrants further  
3 inspection or inquiry of both:

4 a. the character and content of any material or  
5 performance which is reasonably susceptible of  
6 examination by the defendant, and

7 b. the age of the minor. However, an honest mistake,  
8 shall constitute an excuse from liability pursuant to  
9 this act if the defendant made a reasonable bona fide  
10 attempt to ascertain the true age of such minor;

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

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

19 16. "Deceptive audio or visual media" means any video  
20 recording, motion picture film, sound recording, electronic image,  
21 or photograph, or any technological representation of speech or  
22 conduct substantially derivative thereof that appears to  
23 authentically depict any speech or conduct of a person who did not,  
24 in fact, engage in the speech or conduct and the production of which  
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1 was substantially dependent upon technical means, rather than the  
2 ability of another person to physically or verbally impersonate the  
3 person.

4 SECTION 5. This act shall become effective November 1, 2024.

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