STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1976

By: Deevers

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2021, Sections 1024.1, 1024.2, and 1040.8, which relate to obscenity and child pornography; defining term; providing severability clause; authorizing civil action; providing elements of certain award; modifying elements of felony offense; providing certain construction; modifying elements of misdemeanor offense; and providing an effective date.

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

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

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

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

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

a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards,

b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards, and

c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

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

2. “Performance” means and includes any display, live or recorded, in any form or medium;

3. “Sexual conduct” means and includes any of the following:

a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated,

b. acts of deviate sexual conduct, including oral and anal sodomy,

c. acts of masturbation,

d. acts of sadomasochistic abuse including but not limited to:
(1) flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature, or

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

e. acts of excretion in a sexual context, or

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

4. “Explicit child pornography” means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.

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

5. As used in this title, “unlawful pornography” means any visual depiction or individual image stored or contained in any format on any medium including, but not limited to, film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, play, or performance in which a person is engaged in any of the following acts with a person:

   a. sexual intercourse which is normal or perverted,
b. anal sodomy,
c. sexual activity with an animal,
d. sadomasochistic abuse,
e. flagellation or torture,
f. physical restraint such as binding or fettering in the context of sexual conduct,
g. fellatio or cunnilingus,
h. excretion in the context of sexual conduct,
i. lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, and
j. lewd exhibition of the uncovered genitals, buttocks, or, if such person is female, the breast, for the purpose of sexual stimulation of the viewer.

C. It is the intent of the Legislature that every provision, section, subsection, sentence, clause, phrase, or word in the definition of unlawful pornography is severable from each other, such that if any of the listed items is found by a court to be invalid or unconstitutional, the remaining items will be severed and may not be affected. All constitutionally valid applications of this section shall be severed from any application that a court finds to be invalid, leaving the valid applications in force, because it is the intent and priority of the Legislature that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this section to be an unconstitutional
restraint in a large or substantial fraction of relevant cases, the
applications that do not present an unconstitutional restraint shall
be severed from the remaining applications and shall remain in
force, and shall be treated as if the Legislature had enacted a
statute limited to the person, group of persons, or circumstances
for which the application of the statute does not present an
unconstitutional restraint on protected speech. If any court
declares or finds a provision of this section facially
unconstitutional, when discrete applications of that provision can
be enforced against a persons, group of persons, or circumstances
without violating the United States Constitution and Oklahoma
Constitution, those applications shall be severed from all remaining
applications of the provision, and the provision shall be
interpreted as if the Legislature had enacted a provision limited to
the person, group of persons, or circumstances for which the
provision’s application will not violate the United States
Constitution and Oklahoma Constitution.

D. The Legislature further declares that it would have enacted
this section, and each provision, subsection, sentence, clause,
phrase, or word, and all constitutional applications of this
section, irrespective of the fact that any provision, subsection,
sentence, clause, phrase, or word, or application of this section,
were to be declared unconstitutional or to represent an
unconstitutional restraint. If any provision of this section is
found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force. No court may decline to enforce the severability requirements of this section on the grounds that severance would rewrite the statute or involve the court in legislative or lawmaking activity.

E. Each of the items of unlawful pornography in paragraph 5 of subsection B are depictions of sexual conduct which are patently offensive under contemporary community standards in this state, and have as their dominant theme an appeal to prurient interest in sex under contemporary community standards of this state, and may not be produced or distributed within the state if they lack serious literary, artistic, educational, political, or scientific purposes or value.

F. Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

1. Produces or distributes unlawful pornography that lacks serious literary, artistic, educational, political, or scientific purposes or value;

2. Knowingly engages in conduct that aids or abets the production or distribution of unlawful pornography that lacks serious literary, artistic, educational, political, or scientific purposes or value; or
3. Intends to engage in the conduct provided for in paragraphs 1 and 2 of this subsection.

G. If a claimant prevails in an action brought under this section, the court shall award:

1. Injunctive relief sufficient to prevent the defendant from violating this section or engaging in acts that aid or abet violations of this section;

2. Statutory damages not less than Ten Thousand Dollars ($10,000.00) for each image or depiction produced or distributed within this state; and

3. Court costs and attorney fees.

H. Notwithstanding any other provision of law, a court may not award court costs or attorney fees to a defendant in an action brought under this section.

SECTION 2. AMENDATORY 21 O.S. 2021, Section 1024.2, is amended to read as follows:

Section 1024.2. It shall be unlawful for any person to buy, procure, view, or possess child pornography in violation of Sections or obscene materials or to distribute any unlawful pornography that lacks serious literary, artistic, educational, political, or scientific purposes or value as defined in Section 1024.1 through 1024.4 of this title. Such person shall, upon conviction, be guilty of a felony and shall be imprisoned for a period of punishable by imprisonment in the custody of the Department of Corrections for not
more than twenty (20) years or a fine up to, but not exceeding, not
to exceed Twenty-five Thousand Dollars ($25,000.00) or by both such
fine and imprisonment. This shall not be construed to prevent
spouses from sending images of a sexual nature to each other.

SECTION 3. AMENDATORY 21 O.S. 2021, Section 1040.8, is
amended to read as follows:

Section 1040.8. A. No person shall knowingly photograph, act
in, pose for, model for, print, sell, offer for sale, give away,
exhibit, publish, offer to publish, or otherwise distribute,
display, or exhibit any book, magazine, story, pamphlet, paper,
writing, card, advertisement, circular, print, picture, photograph,
motion picture film, electronic video game or recording, image,
cast, slide, figure, instrument, statue, drawing, presentation, or
other article which is obscene material, unlawful pornography, or
child pornography, as defined in Section 1024.1 of this title. In
the case of any unsolicited mailing of any of the material listed in
this section, the offense is deemed complete from the time such
material is deposited in any post office or delivered to any person
with intent that it shall be forwarded. Also, unless preempted by
federal law, no unsolicited mail which is harmful to minors pursuant
to Section 1040.75 of this title shall be mailed to any person. The
party mailing the materials specified in this section may be
indicted and tried in any county wherein such material is deposited

or delivered, or in which it is received by the person to whom it is addressed.

B. Any person who violates any provision of this section involving obscene materials or unlawful pornography, upon conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine of not less than Two Thousand Dollars ($2,000.00), or by both such fine and imprisonment.

C. Any person who violates any provision of this section involving child pornography, upon conviction, shall be guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not less than three (3) years and not more than twenty (20) years, or by a fine of not less than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent violation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than ten (10) years and not more than thirty (30) years, or by a fine of not less than Twenty Thousand Dollars ($20,000.00), or by both such fine and imprisonment. The violator, upon conviction, shall be required to register as a sex offender under the Sex Offenders Registration Act.

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