

Oklahoma

21 Okl. St.

21 Okl. St. § 1021. Indecent exposure--Indecent exhibitions--Obscene material or child pornography--Solicitation of minors

- 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 paragraphs 2 through 4 of this subsection and shall not be subject to registration under the Sex Offenders Registration Act;
 2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;
 3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any **obscene** material or child pornography; or
 4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of **obscene** material or child pornography, shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than Five Hundred Dollars (\$ 500.00) nor more than Twenty Thousand Dollars (\$ 20,000.00) or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or by both such fine and imprisonment.
- B. Every person who:
 1. Willfully solicits or aids a minor child to perform; or
 2. Shows, exhibits, loans, or distributes to a minor child any **obscene** material or child pornography for the purpose of inducing said minor to participate in, any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty of a felony, upon conviction, and shall be punished by imprisonment in the custody of the Department of Corrections for not less than ten (10) years nor more than thirty (30) years, except when the minor child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.
- C. Persons convicted under this section shall not be eligible for a deferred sentence.
- D. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.
- E. For purposes of this section, "downloading on a computer" means electronically transferring an electronic file from one computer or electronic media to another

computer or electronic media.

21 Okl. St. § 1021.1. Persons to whom act does not apply--Civil or injunctive relief

- A. Sections 1021 through 1024.4 of this title shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise prescribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities.
- B. The criminal provisions of this title shall not prohibit the district attorney from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of material harmful to minors, or the possession of child pornography.

21 Okl. St. § 1021.2. Minors--Procuring for participation in pornography

- A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment for not more than twenty (20) years or by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$ 25,000.00) or by both said fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.
- B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

§ 1021.3. Guardians--Parents--Custodians--Consent to participation of minors in child pornography

- A. Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a felony and, upon conviction, shall be imprisoned in the custody of the Department of Corrections for a period of not more than twenty (20) years or a fine of not more than Twenty-five Thousand Dollars (\$ 25,000.00) or by both such fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.
- B. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

§ 1021.4. Disclosure of obscene materials containing minors

- 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 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 whether directly viewable, compressed or encoded depicting a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in Section 1024.1 of this title shall immediately or as soon as possible report by telephone such instance of suspected child abuse or child pornography to the law enforcement agency having jurisdiction over the case and shall prepare and send a written report of the incident with an attached copy of such material, within thirty-six (36) hours after receiving the information concerning the incident.
- For the purposes of this section:
 1. "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person but shall not include a person who develops film or makes prints for a public agency; and
 2. "Commercial computer technician" means any person who repairs, installs, or otherwise services any computer including, but not limited to, any component part, device, memory storage or recording mechanism, auxiliary storage, recording or memory capacity, or any other materials relating to operation and maintenance of a computer or computer network or system, for compensation. The term shall also include any employee of such person.
- B. Any person who violates the provisions of this section, upon conviction, shall be guilty of a misdemeanor and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars (\$ 500.00) or by imprisonment in the county jail not to exceed one (1) year, or both such fine and imprisonment.
- C. Nothing in this section shall be construed to require or authorize any person to act outside the scope of such person's professional capacity or employment by searching for prohibited materials or media.

§ 1022. Seizure of obscene material or child pornography--Delivery to magistrate

Every person who is authorized or enjoined to arrest any person for a violation of paragraph 3 of subsection A of Section 1021 of this title is equally authorized and enjoined to seize one copy of the obscene material, or all copies of explicit child pornography, found in possession of or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 1023. Finding by magistrate that material is obscene or child pornography-- Issuance of factual and legal basis--Delivery to district attorney

The magistrate to whom any child pornography, or any obscene material, is delivered

pursuant to Section 1022 of this title, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such child pornography or obscene material, and if the magistrate finds it to be obscene material or child pornography, the magistrate shall cause the same to be delivered to the district attorney of the county in which the accused is liable to indictment or trial. The magistrate shall issue in writing the factual and legal basis for the determination by the magistrate of the character of the child pornography or obscene material.

§ 1024. Destruction of child pornography or obscene material

Upon the final conviction of the accused, such district attorney shall cause any child pornography, or obscene material, in respect whereof the accused stands convicted and which remains in the possession or under the control of such district attorney to be destroyed.

1024.1. Definitions.

A. As used in Sections 1021, 1021.1 through 1021.3, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this title, "child pornography" means and includes any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, 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 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.

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 medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, CD-ROM, magnetic disk memory, magnetic tape memory or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, 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.
[1]Added by Laws 1981, c. 146, § 1, eff. Oct. 1, 1981. Amended by Laws 1984, c. 91, § 4, eff. Nov. 1, 1984; Laws 1996, c. 37, § 7, eff. Nov. 1, 1996; Laws 2000, c. 208, § 8, eff. Nov. 1, 2000.

***amended in 2012:

2011 OK. SB 1016

Enacted, April 23, 2012

Reporter: 2012 OK. ALS 115; | 2012 OK. Laws 115; | 2012 OK. Ch. 115; | 2011 OK. SB 1016

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1024.1, is amended to read as follows:

Section 1024.1. A. As used in Sections 1021, 1021.1 through ~~1021.3~~ 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, ~~CD-ROM, magnetic disk memory, magnetic tape memory, electronic or photo-optical format,~~ 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, ~~CD-ROM, optical, magnetic disk memory, magnetic tape memory, electronic or photo-optical format 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.

- SECTION 2. ([Next](#) | [Previous](#)) AMENDATORY 74 O.S. 2011, Section 151.1, is amended to read as follows:

Section 151.1. A. The Oklahoma State Bureau of Investigation shall establish an **Internet** Crimes Against Children (ICAC) unit for the primary purpose of investigating **Internet** crimes committed against children, including, but not limited to, offenses related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses. The unit shall additionally promote safe **Internet** use among children and their parents by various media

or printed-material campaigns or by offering educational programs to **schools** or communities throughout this state. The Bureau shall employ sufficient employees to investigate and implement the ICAC unit.

B. The Director of the Oklahoma State Bureau of Investigation is hereby authorized to enter into local cooperative agreements with local law enforcement agencies for the purpose of appointing ICAC Affiliate Task Force Agents to assist the ICAC unit of the Bureau. ICAC Affiliate Task Force Agents shall be employees and commissioned law enforcement officers of the local law enforcement agency entering into agreement with the Oklahoma State Bureau of Investigation and shall not be employees of the Bureau. ICAC Affiliate Task Force Agents shall have general peace officer powers and the authority to arrest persons throughout the state for the purpose of investigating **Internet** crimes committed against children including, but not limited to, offenses related to child pornography, solicitation of minors for pornography, prostitution or sex-related offenses. ICAC Affiliate Task Force Agents shall promote safe **Internet** use among children and parents of children by various media or printed-material campaigns or by offering educational programs to **schools** or communities throughout Oklahoma. The Director of the Bureau may renew, suspend or revoke any agreement appointing an ICAC Affiliate Task Force Agent at any time. ICAC Affiliate Task Force Agents serve solely at the discretion and will of the Director of the Oklahoma State Bureau of Investigation.

- SECTION 3. This act shall become effective November 1, 2012.

Approved by the Governor April 23, 2012

1024.2. Purchase, procurement or possession of child pornography.

It shall be unlawful for any person to buy, procure or possess child pornography in violation of Sections 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 not more than five (5) years or a fine up to, but not exceeding, Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment.

1024.3. Seizure of evidentiary copy of obscene material or all copies of explicit child pornography.

Every person who is authorized or enjoined to arrest any person for a violation of this act is equally authorized or enjoined to seize an evidentiary copy of any obscene material or child pornography or all copies of explicit child pornography found in the possession of or under the control of the person so arrested and to deliver the obscene material or child pornography to the magistrate before whom the person so arrested is required to be taken. [3]Added by Laws 1981, c. 146, § 3, eff. Oct. 1, 1981. Amended by Laws 2000, c. 208, § 10, eff. Nov. 1, 2000.

§ 1024.4. Destruction of obscene material or child pornography upon conviction

Upon conviction of the accused, any magistrate or district attorney shall cause any obscene material or child pornography, in respect whereof the accused stands convicted and which remains in the possession or control of such magistrate or district attorney, to be destroyed.

§ 1024.5. Investigation of child pornography

- A. When any person has engaged in, is engaged in, or is attempting or conspiring to engage in any conduct constituting a violation of any of the provisions of Section 1024.2 of Title 21 of the Oklahoma Statutes, the Oklahoma Attorney General or any district attorney in Oklahoma may conduct an investigation of the activity. On approval of the district judge, the Attorney General or district attorney, in accordance with the provisions of Section 258 of Title 22 of the Oklahoma Statutes, is authorized before the commencement of any civil or criminal proceeding to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any business papers or records by subpoena duces tecum. Evidence collected pursuant to this section shall not be admissible in any civil proceeding.
- B. Any business papers and records subpoenaed by the Attorney General or district attorney shall be available for examination by the person who produced the material or by any duly authorized representative of the person. Transcripts of oral testimony shall be available for examination by the person who produced such testimony and their counsel.
- Except as otherwise provided for in this section, no business papers, records, or transcripts or oral testimony, or copies of it, subpoenaed by the Attorney General or district attorney shall be available for examination by an individual other than another law enforcement official without the consent of the person who produced the business papers, records or transcript.
- C. All persons served with a subpoena by the Attorney General or district attorney shall be paid the same fees and mileage as paid witnesses in the courts of this state.
- D. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Attorney General or district attorney pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business papers or records that are the subject of the subpoena duces tecum.
- E. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than Five Hundred Dollars (\$ 500.00), or by both such fine and imprisonment.

§ 1025. Bawdy house, etc.--Penalty

Every person who keeps any bawdy house, house of ill fame, of assignation, or of prostitution, or any other house or place for persons to visit for unlawful sexual intercourse, or for any other lewd, obscene or indecent purpose, is guilty of a misdemeanor and upon conviction shall be fined in any sum not less than One Hundred Dollars (\$ 100.00) nor more than Five Hundred Dollars (\$ 500.00) for each offense.

1040.8. Publication, distribution or participation in preparation of obscene material or child pornography - Unsolicited mailings.

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 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. Any person who violates any provision of this section, 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 more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

[4]Added by Laws 1961, p. 230, § 1, emerg. eff. July 26, 1961. Amended by Laws 1970, c. 91, § 1, emerg. eff. March 27, 1970; Laws 1983, c. 5, § 1, emerg. eff. Feb. 23, 1983; Laws 2000, c. 208, § 12, eff. Nov. 1, 2000; Laws 2002, c. 107, § 1, eff. Nov. 1, 2002.

§ 1040.11. Oklahoma Law on Obscenity and Child Pornography

Sections 1021 through 1040.77 of this title shall be known as the "Oklahoma Law on Obscenity and Child Pornography" and may be referred to by that designation.

§ 1040.12a. Aggravated possession of child pornography--Penalties--Definitions

- A. Any person who, with knowledge of its contents, possesses one hundred (100) or more separate materials depicting child pornography shall be, upon conviction, guilty of aggravated possession of child pornography. The violator shall be punished by imprisonment in the custody of the Department of Corrections for a term not exceeding life imprisonment and by a fine in an amount not more than Ten Thousand Dollars (\$ 10,000.00). The violator, upon conviction, shall be required to register as a sex offender under the Sex Offenders Registration Act.
- B. For purposes of this section:
 1. Multiple copies of the same identical material shall each be counted as a separate item;
 2. The term "material" means the same definition provided by Section 1040.75 of Title 21 of the Oklahoma Statutes and, in addition, includes all digital and computerized images and depictions; and
 3. The term "child pornography" means the same definition provided by Section 1040.80 of Title 21 of the Oklahoma Statutes and, in addition, includes sexual conduct, sexual excitement, sadomasochistic abuse, and performance of material harmful to minors where a minor is present or depicted as such terms are defined in Section 1040.75 of Title 21 of the Oklahoma Statutes.

§ 1040.13. Acts prohibited--Felony

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this state for sale or commercial distribution, or in this state prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any obscene material or child pornography or gives information stating when, where,

how, or from whom, or by what means obscene material or child pornography can be purchased or obtained, upon conviction, is guilty of a felony and shall be punished by imprisonment for not more than ten (10) years in prison or by a fine of not more than Ten Thousand Dollars (\$ 10,000.00), or by both such imprisonment and fine.

§ 1040.13a. Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor

- A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this subsection, "by use of any technology" means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD-ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any transmission of any written or text message, audio or sound message, photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device.
- B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.
- C. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.
- D. Any violation of the provisions of this section shall be a felony, punishable by a fine in an amount not to exceed Ten Thousand Dollars (\$ 10,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not more than ten (10) years, or by both such fine and imprisonment. For purposes of this section, each communication shall constitute a separate offense. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.
- E. For purposes of any criminal prosecution pursuant to any violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of this state by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device in this state, regardless of the

actual jurisdiction where the violator resides.

§ 1040.14. Action for adjudication of obscenity or child pornographic content of mailable matter

- (a) Whenever the Attorney General of this state or the district attorney for any district has reasonable cause to believe that any person, with knowledge of its contents, is (1) engaged in sending or causing to be sent, bringing or causing to be brought, into this state for sale or commercial distribution, or is (2) in this state preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell, or commercially distribute or to exhibit or give away or offer to give away, any obscene material or child pornography, the Attorney General or the district attorney for the county into which such mailable matter is sent or caused to be sent, brought or caused to be brought, or in which it is prepared, sold, exhibited or commercially distributed or given away or offered to be given away, or possessed, may institute an action in the district court for an adjudication of the obscenity or child pornographic content of the mailable matter.
- (b) The procedure to be followed shall be that set forth in this act.

§ 1040.15. Petition

- The action described in Section 1040.14 of this title shall be commenced by filing with the court a petition:
 - (a) directed against the matter by name or description;
 - (b) alleging it is obscene material or child pornography;
 - (c) listing the names and addresses, if known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into this state for sale or commercial distribution and of any person in this state preparing, selling, exhibiting or commercially distributing it, or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;
 - (d) seeking an adjudication that it is either obscene material or child pornography, as defined in Section 1024.1 of this title;
 - (e) seeking a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into this state for sale or commercial distribution, or in this state preparing, selling, exhibiting or commercially distributing it, giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;
 - (f) seeking its surrender, seizure and destruction.

§ 1040.16. Summary examination of material--Dismissal or show cause order

- (a) Upon the filing of the petition described in Section 1040.15 of this title, the court shall summarily examine the obscene material or child pornography.
- (b) If the court finds no probable cause to believe it is obscene material or child pornography, the court shall dismiss the petition.
- (c) If the court finds probable cause to believe it is obscene material or child pornography, the court shall immediately issue an order or rule to show cause why it should not be adjudicated to be obscene material or child pornography.
- (d) The order or rule to show cause shall be:
 - (1) directed against it by name or description;
 - (2) if their names and addresses are known, served personally in the manner provided in this act for the service of process or in any manner now or

hereafter provided by law, upon its author, publisher, and any other person interested in sending or causing it to be sent, bringing or causing it to be brought, into this state for sale or commercial distribution, and on any person in this state preparing, selling, exhibiting or commercially distributing it or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

(3) returnable six (6) days after its service.

§ 1040.20. Destruction--Injunction

- In the event that a judgment is entered adjudicating the matter to be obscene material or child pornography, the court shall further:
 - (a) order the person or persons having possession of it to surrender it to the sheriff for destruction and, in the event that person refuses, order the sheriff in the county in which the action was brought to seize and destroy it;
 - (b) enter a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into this state for sale or commercial distribution, and against any person in this state preparing, selling, exhibiting or commercially distributing it, giving it away or offering to give it away, or having it in his possession with intent to sell or commercially distribute or exhibit or give it away or offer to give it away.

§ 1040.21. Sending or selling of materials with knowledge of judgment

Any matter which, following the entry of a judgment that it is obscene material or child pornography, is sent or caused to be sent, brought or caused to be brought, into this state for sale or commercially distributed, given away or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of Section 1040.13 of this title.

§ 1040.22. Contempt

After the entry of a judgment that the matter is obscene material or child pornography, any person who, with knowledge of the judgment or of the order or rule to show cause, sends or causes to be sent, brings or causes to be brought, into this state for sale or commercial distribution, the matter, or who in this state sells, exhibits or commercially distributes it, gives away or offers to give it away, or has it in his possession with intent to sell or commercially distribute or exhibit or give away or offer to give it away, shall be guilty of contempt of court and upon conviction after notice and hearing shall be imprisoned in the county jail for not more than one (1) year or fined not more than One Thousand Dollars (\$ 1,000.00), or be so imprisoned or fined.

§ 1040.23. Extradition

In all cases in which a charge or violation of any section or sections of this act is brought against a person who cannot be found in this state, the executive authority of this state,

being the Governor or any person performing the functions of Governor by authority of the law of this state, shall demand extradition of such person from the executive authority of the state in which such person may be found, pursuant to the law of this state.

§ 1040.24. Presumptions

The possession of two or more of any single article that is obscene material or child pornography, or the possession of a combined total of any five articles that are obscene material or child pornography (except the possession of them for the purpose of return to the person from whom received) shall create a presumption that they are intended for sale or commercial distribution, exhibition or gift, but such presumption shall be rebuttable. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

§ 1040.25. Jurisdiction--Service of process--Fines--Execution against property

- In order to protect the citizens and residents of this state against unfit articles and printed or written matter or material which originate outside this state, it is the purpose of this section to subject to the jurisdiction of the courts of this state those persons who are responsible for the importation of those things into this state.
- To that end and in the exercise of its power and right to protect its citizens and residents, it is hereby provided that any person, whether or not a citizen or resident of this state, who sends or causes to be sent into this state for resale in this state any article or printed matter or material is for the purpose of this act transacting business in this state and by that act:
 - (a) submits himself to the jurisdiction of the courts of this state in any proceeding commenced under Section 4 of this act;
 - (b) constitutes the Secretary of State his agent for service of process in any proceeding commenced under Section 4 of this act; and consents that service of process shall be made by serving a copy upon the Secretary of State or by filing a copy in the Secretary of State's office, and that this service shall be sufficient service provided that, within one (1) day after service, notice of the service and a copy of the process are sent by registered mail by the Attorney General or district attorney to him at his last-known address and proof of such mailing filed with the clerk of the court within one (1) day after mailing;
 - (c) consents that any fine levied against him under any section of this act may be executed against any of his real property, personal property, tangible or intangible, choses in action or property of any kind or nature, including debts owing to him, which are situated or found in this state.
- Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may also be made by personally serving the summons upon him outside this state with the same force and effect as though summons had been personally served within this state. The service of summons shall be made in like manner as service within this state, by any person over twenty-one (21) years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

§ 1040.52. Showing of specified actual or simulated sexual activity and nudity at certain outdoor theaters prohibited--Penalty

- A. Every owner or operator of an outdoor theater in this state is guilty of a misdemeanor who shows or causes to be shown a motion picture depicting:
 1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or
 2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernably turgid state, even if completely and opaquely covered.
- B. This section shall be applicable, however, only where the viewing portion of the screen of such theater is situated within the view of any residence or where children under eighteen (18) years of age have an understanding view of the picture.
- C. Any prosecution under this section must be preceded by a written complaint from a resident affected by the terms of this act.
- D. Upon conviction of a violation of this section such person shall be imprisoned in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars (\$ 1,000.00), or be both so imprisoned and fined.

§ 1040.53. Projectionists, ushers or cashiers excepted from statutes relating to exhibit of obscene motion pictures

The provisions of statutes of this state and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial theater open to the general public shall not apply to a projectionist or assistant projectionist, usher or cashier, provided he has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist, usher or cashier. Provided further, that such person is not acting as manager or director of such theater. The provisions of this act shall not exempt any projectionist or assistant projectionist, usher or cashier from criminal liability for any act unrelated to projection of motion pictures in a commercial theater open to the general public.

1040.54. Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography.

A. Any peace officer of this state is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography, as defined in subsection A of Section 1024.1 of this title. Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such

equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and
2. Upon all other owners or parties in interest, whose addresses are unknown, by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

D. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the state, if such fact is proven.

E. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

F. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography, as defined in paragraph 1 of subsection A of Section 1024.1 of this title, with knowledge by the owner of the equipment.

G. The owner or party in interest may prove that the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to the state and shall be sold pursuant to the judgment of the court.

J. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county where the equipment was seized or in the custody of the party seeking the forfeiture. The district attorney or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been released by the district attorney or the party seizing the equipment shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

K. The district attorney or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual expenses of preserving the equipment; and
3. The balance to a revolving fund in the office of the county treasurer of the county where the equipment was seized, said fund to be used and maintained as a revolving fund for any

purpose by the department that made the seizure with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. The proceeds of the sale of any equipment seized, taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual expenses of preserving the equipment; and
3. The balance to a revolving fund of the agency seizing said equipment to be used and maintained as a revolving fund for law enforcement purposes by the agency seizing said equipment. Monies from said fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor.

N. When any equipment is forfeited pursuant to this section, the district court of jurisdiction may order that the equipment seized may be retained by the state, county, or municipal law enforcement agency which seized the equipment for its official use.

O. If the court finds that the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography as defined in paragraph 1 of subsection A of Section 1024.1 of this title, the court shall order the equipment released to the owner.

P. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

[5]Added by Laws 1986, c. 191, § 1, eff. Nov. 1, 1986. Amended by Laws 2000, c. 101, § 1, eff. Nov. 1, 2000; Laws 2000, c. 208, § 23, eff. Nov. 1, 2000.

§ 1040.55. Adult cabaret and sexually oriented business exterior advertising signs--Requirements

- A. As used in this section:
 1. "Adult cabaret" means a nightclub, bar, restaurant, or similar establishment in which persons appear in a state of nudity in the performance of their duties;
 2. "Sexually oriented business" means any business which offers its patrons goods of which a substantial portion are sexually oriented materials. Any business where more than ten percent (10%) of display space is used for sexually oriented materials shall be presumed to be a sexually oriented business;
 3. "Sexually oriented materials" means any textual, pictorial, or three-dimensional material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way that is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and
 4. "State of nudity" means the showing of either:

- a. the human male or female genitals or pubic area with less than a fully opaque covering, or
 - b. the female breast with less than a fully opaque covering or any part of the nipple.
- B. Except as otherwise provided in this subsection, no billboard or other exterior advertising sign for an adult cabaret or sexually oriented business shall be located within one (1) mile of any state highway. If such a business is located within one (1) mile of a state highway, the business may display a maximum of two exterior signs on the premises of the business, consisting of one identification sign and one sign solely giving notice that minors are not permitted on the premises. The identification sign shall be no more than forty (40) square feet in size and shall include no more than the following information: name, street address, telephone number, and operating hours of the business.
- C. Signs existing at the time of the adoption of this section, which do not conform to the requirements of this section, may be allowed to continue as a nonconforming use, but shall be made to conform not later than November 1, 2009.
- D. The Attorney General shall represent the state in all actions and proceedings arising from this section. In addition, all costs incurred by the Attorney General to defend or prosecute this section, including payment of all court costs, civil judgments, and, if necessary, any attorney fees, shall be paid from the General Revenue Fund.
- E. Any owner of a business who violates the provisions of this section shall be guilty of a misdemeanor.

§ 1040.56. Cause of action--Damages--Statute of limitations

- A. Any person who, while under the age of eighteen (18), was a victim of an offense provided for in Section 681, 741, 843.5, 852.1, 867, 885, 886, 888, 891, 1021, 1021.2, 1021.3, 1024.2, 1040.8, 1040.12a, 1040.13, 1040.13a, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes, where such offense resulted in a conviction and any portion of such offense was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such child pornography, may bring a civil action against the producer, promoter, or intentional possessor of such child pornography, regardless of whether the victim is now an adult.
- B. In any civil action brought under this section, the prevailing plaintiff shall recover the actual, special and punitive damages such person sustained and the cost of the suit, including reasonable attorney fees.
- C. Notwithstanding any other provision of law, any civil action commenced pursuant to this section shall be filed within three (3) years after the later of:
 - 1. The conclusion of the related criminal case;
 - 2. The notification to the victim by a law enforcement agency of the creation, possession, distribution or promotion of child pornography; or
 - 3. In the case of a victim younger than eighteen (18) years of age, within three (3) years after the person reaches the age of eighteen (18).
- D. It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in the child pornography.
- E. As used in this section, "child pornography" shall have the same meaning as such term is defined in Section 1024.1 of Title 21 of the Oklahoma Statutes.
- F. The provisions of this section shall not apply to any acts performed in the scope and course of employment by any:
 - 1. Law enforcement officer;
 - 2. Forensic examiner;
 - 3. Prosecuting attorney; or

4. Employee of a child advocacy organization.

§ 1040.76. Material or performances harmful to minors--Prohibited acts

- No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:
 1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds (2/3) of the material is not exposed to view;
 2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or
 3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

§ 1040.77. Violations--Penalties

Any person convicted of violating any provision of Section 1040.76 of this title shall be guilty of a misdemeanor and shall be fined a sum not exceeding Five Hundred Dollars (\$ 500.00) for the first or second offense. Any person convicted of a third or subsequent violation of any provision of Section 1040.76 of this title shall be guilty of a misdemeanor and shall be fined a sum not exceeding One Thousand Dollars (\$ 1,000.00). Each day that any violation of Section 1040.76 of this title occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by Section 1040.76 of this title shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by Section 1040.76 of this title shall constitute a single offense.

§ 1040.80. Interactive computer service providers--Removal of child pornography--Court orders--Notice and hearing--Violations--Penalties--Petition for relief

- A. As used in this section, the term:
 1. "Interactive computer service provider" means any provider to the public of computer access via the Internet to a computer server or similar device used for the storage of graphic, video or images;
 2. "Internet" means the international computer network of both federal and nonfederal interoperable packet-switched data networks;
 3. "Controlled or owned by" with respect to a server or other storage device means a server or other such device that is entirely owned by the interactive computer service provider or is subject to exclusive management by the interactive computer service provider by agreement or otherwise; and
 4. "Child pornography" means explicit child pornography as defined in Section 1024.1 of Title 21 of the Oklahoma Statutes.
- B. The Attorney General or a law enforcement officer who receives information that an item of alleged child pornography resides on a server or other storage device controlled or owned by an interactive computer service provider shall:

1. Contact the interactive computer service provider that controls or owns the server or other storage device where the item of alleged child pornography is located;
 2. Inform the interactive computer service provider of the provisions of this section; and
 3. Request that the interactive computer service provider voluntarily comply with this section and remove the item of alleged child pornography from its server or other storage device expeditiously.
- C.
 1. If an interactive computer service does not voluntarily remove the item of alleged child pornography in a timely manner, the Attorney General or law enforcement officer shall apply for a court order of authorization to remove the item of alleged child pornography under this section. The obligation to remove the item of alleged child pornography shall not apply to the transmitting or routing of, or the intermediate, temporary storage or caching of an image, information or data that is otherwise subject to this section.
 2. The application for a court order shall include:
 - a. the authority of the applicant to make such an application,
 - b. the identity and qualifications of the investigative or law enforcement officer or agency that, in the official scope of that officer's duties or agency's authority, discovered the images, information, or data,
 - c. a particular statement of the facts relied upon by the applicant, including:
 - (1) the identity of the interactive computer service,
 - (2) identification of the item of alleged child pornography discovered on the server or other storage device controlled or owned by an interactive computer service provider,
 - (3) the particular images, information, or data to be removed or to which access is to be disabled identified by uniform resource locator (URL) or Internet protocol (IP) address, a statement certifying that such content resides on a server or storage device controlled or owned by such interactive computer service provider, and
 - (4) the steps taken to obtain voluntary compliance by such interactive computer service provider with the requirements of this act prior to filing the application,
 - d. such additional testimony and documentary evidence in support of the application as the judge may require, and
 - e. a showing that there is probable cause to believe that the child pornography items constitutes a violation of this section.
 - D. The Attorney General shall notify the interactive computer service provider which is identified in the court's order in accordance with the provisions of this section. The Attorney General shall notify an interactive computer service provider upon the issuance of an order authorizing the removal of the items of alleged child pornography.
 1. The notice by the Attorney General shall include:
 - a. a copy of the application made pursuant to subsection C of this section,

- b. a copy of the court order issued pursuant to subsection K of this section,
 - c. notification that the interactive computer service shall remove the item of alleged child pornography contained in the order which resides on a server or other storage device controlled or owned by such interactive service provider and which are accessible to persons located within this state expeditiously after receipt of the notification,
 - d. notification of the criminal penalties for failure to remove the item of child pornography,
 - e. notification of the right to appeal the court's order, and
 - f. contact information for the Attorney General's Office.
- 2. An interactive computer service may designate an agent within the state to receive notification pursuant to this section.
- E. The interactive computer service provider has the right to request a hearing before the court imposes any penalty under this section.
- F. Nothing in this section may be construed as imposing a duty on an interactive computer service provider to actively monitor its service or affirmatively seek evidence of illegal activity on its service.
- G. Notwithstanding any other provision of law to the contrary, any interactive computer service provider that intentionally violates subsection L of this section commits:
 - 1. A misdemeanor for a first offense punishable by a fine of One Thousand Dollars (\$ 1,000.00);
 - 2. A misdemeanor of a high and aggravated nature for a second offense punishable by a fine of Five Thousand Dollars (\$ 5,000.00); and
 - 3. A felony for a third or subsequent offense punishable by a fine of Thirty Thousand Dollars (\$ 30,000.00) and imprisonment for a maximum of five (5) years.
- H. The Attorney General shall have concurrent prosecutorial jurisdiction with a district attorney for violation of this section.
- I. The removal of the alleged item of child pornography which resides on a server or other storage device, shall not, to the extent possible, interfere with any request of a law enforcement agency to preserve records or other evidence, which may be kept by the interactive computer service provider in the normal course of business.
- J. Upon consideration of an application for authorization to remove the item of alleged child pornography that resides on a server or other storage device controlled or owned by an interactive computer service provider as set forth in subsection C of this section, the judge may enter an ex parte order, as requested or as modified, authorizing the removal of the item of alleged child pornography, if the court determines on the basis of the facts submitted by the applicant that there is or was probable cause for belief that:
 - 1. The item of alleged child pornography constitutes evidence of an act in violation of this section;
 - 2. The investigative or law enforcement officer or agency acted within the official scope of that officer's duties or agency's authority, in discovering the images, information, or data and has complied with the requirements of subsection I and subsection K of this section;
 - 3. An item of alleged child pornography resides on the server or other storage device controlled or owned by the interactive computer service provider and is accessible to persons located in the state; and
 - 4. In the case of an application, other than a renewal or extension, for an order removing the item of alleged child pornography which was the subject of

a previous order authorizing the removal or disabling of access, the application is based upon new evidence or information different from and in addition to the evidence or information offered to support the prior order.

- K. Each order authorizing the removal or disabling of access to an alleged item of child pornography shall contain:
 1. The name of the judge authorized to issue the order;
 2. A particular description of the images, information, or data to be removed or access to such disabled, identified by a URL or IP address, and a statement of the particular violation of the section to which the images, information, or data relate;
 3. The identity of the investigative or law enforcement officer or agency who discovered the images, information, or data and the identity of whoever authorized the application; and
 4. Such additional information or instruction as the court deems necessary to execute the order.
- L. The court shall review the application and testimony, if offered, and, upon a finding of probable cause, issue an order that:
 1. An item of child pornography resides on a server or other storage device controlled by the interactive computer service provider and is accessible to persons located in the state;
 2. The interactive computer service provider shall remove the item residing on a server or other storage device controlled or owned by the interactive computer service provider expeditiously after receiving the order, if practical;
 3. The order shall specify that removal of any item covered by the order shall be accomplished in a fashion that prevents or minimizes the removal of, or restriction of access to, images, information, or data that are not subject to the order;
 4. Failure of the interactive computer service provider to comply with the court's order is a violation of this section;
 5. The removal of the item on the server or other storage device controlled or owned by the interactive computer service provider may not unreasonably interfere with a request by a law enforcement agency to preserve records for a reasonable period and in accordance with law; and
 6. Provides the interactive computer service provider notice and opportunity for a hearing before the court imposes any penalty under this subsection.
- M. An interactive computer service provider who is served with a court order under subsection L of this section shall remove the item of child pornography that is the subject of the order expeditiously after receiving the court order, if practicable.
- N.
 1. An interactive service provider may petition the court for relief for cause from an order issued under subsection L of this section.
 2. The petition may be based on considerations of:
 - a. the cost or technical feasibility of compliance with the order,
or
 - b. the inability of the interactive computer service provider to comply with the order without also removing data, images or information that are not subject to this section.

FILTERING LAWS:

Oklahoma 1996 H.C.R. 1097

ENGROSSED HOUSE CONCURRENT RESOLUTION NO. 1097 By: Paulk, Benson, Perry, Glover, Deutschendorf, Graves, Davis, Pope (Clay) and Dank of the House and Weedn of the Senate

A Concurrent Resolution directing all state agencies and all state educational institutions to immediately remove from their computer systems all illegal obscene material and especially child pornography; directing all state agencies and all state education institutions to immediately take necessary steps to maintain computer systems that are free from all illegal obscene material and especially child pornography; and directing distribution.

WHEREAS, the Internet is becoming an integral part of Oklahoma's commercial, educational, and governmental operations;

and WHEREAS, state agencies and institutions of higher education within The Oklahoma State System of Higher Education are increasingly providing Internet access, including access to USENET newsgroups;

and WHEREAS, there is currently little control by state agencies or institutions of higher education within The Oklahoma State System of Higher Education of subjects accessed by users of the Internet;

and WHEREAS, it is widely known that, in addition to excellent educational material, certain USENET newsgroups contain the vilest forms of obscenity and child pornography;

and WHEREAS, these same USENET newsgroups can be found on the computer systems of state agencies and institutions of higher education within The Oklahoma State System of Higher Education;

and WHEREAS, the Oklahoma Legislature does not embrace censorship but over the years has addressed the harmful effects of obscenity, pornography and especially child pornography on Oklahoma's women, children and families by providing criminal penalties for possession and distribution of illegal obscene and child pornography;

and WHEREAS, the United States Supreme Court has declared such material unprotected by the First Amendment;

and WHEREAS, computer network systems which allow access to USENET newsgroups do so by importing the material in the newsgroups, storing such material on local computer systems, and upon request by distributing the material to local users from those local computer systems;

and WHEREAS, operators of computer network systems that allow access to USENET newsgroups make content decisions concerning which newsgroups to import, which newsgroups to block from importing, and how long to store newsgroup material;

and WHEREAS, no public funds should ever be used to accumulate and distribute illegal material which is by law obscene or pornographic.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 45TH OKLAHOMA LEGISLATURE, THE SENATE CONCURRING THEREIN: THAT all state agencies and all institutions of higher education within The Oklahoma State System of Higher Education be directed to immediately cease distributing, making available and storing such material and to immediately remove from their computer systems all illegal obscene material and especially all child pornography, including, but not limited to, such material that is a part of USENET newsgroups stored on their local computer systems.

THAT all state agencies and all institutions of higher education within The Oklahoma State System of Higher Education be directed to take necessary steps to maintain computer systems that are free from all illegal obscene materials and especially child pornography.

THAT a copy of this resolution be dispatched to the chief administrative officers of all state agencies and all institutions of higher education within The Oklahoma State System of Higher Education.