

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part IV. Crimes Against Public Decency and Morality

Chapter 39: Cherokee Nation Obscenity and Child Pornography Act

§ 1024.1. Definitions

Cite as: 21 CNCA § 1024.1

A. As used in 21 CNCA §§ 1021, 1021.1 through 1021.4, 1022 through 1024, and 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 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 21 CNCA §§ 1021 through 1024.4 of this title:

1. "**Obscene material**" means and includes any representation, performance, depiction or description of sexual conduct, whether in any form on any or 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 deviant sexual conduct, including oral and anal sodomy;

c. acts of masturbation;

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

i. 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

ii. 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.

4. 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.

The types of sexual conduct described in paragraph 4 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.

Historical Data

LA 10–90, eff. November 13, 1990. Amended LA 20–08, eff. January 12, 2009. Amended LA 09–12, eff. May 23, 2012. Amended LA 07-21, eff. February 22, 2021.