

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

§ 1040.75. Definitions

Cite as: 21 CNCA § 1040.75

As used in 21 CNCA §§ 1040.75 through 1040.77:

1. **“Minor”** means any unmarried person under the age of eighteen (18) years;

2. **"Harmful to minors"** means:

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

i. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

ii. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

iii. the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors; or

b. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence.

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

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

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

- i. is glamorized or gratuitous;
- ii. is graphic violence used to shock or stimulate;
- iii. is graphic violence that is not contextually relevant to the material;
- iv. is so pervasive that it serves as the thread holding the plot of the material together;
- v. trivializes the serious nature of realistic violence;
- vi. does not demonstrate the consequences or effects of realistic violence;
- vii. uses brutal weapons designed to inflict the maximum amount of pain and damage;
- viii. endorses or glorifies torture or excessive weaponry; or
- ix. depicts lead characters who resort to violence freely.

4. **"Nudity"** means the:

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

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

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

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

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

9. "CD-ROM" means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors;
10. "Magnetic Disk Memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes;
11. "Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;
12. "**Performance**" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
13. "**Person**" means any individual, partnership, association, corporation, or other legal entity of any kind.
14. "**Reasonable bona fide attempt**" means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

Historical Data

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