

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 As Amended

4 SENATE BILL NO. 1758

5 By: Sykes and Shortey of the
6 Senate

7 and

8 McCullough of the House

9 An Act relating to crimes and punishment; allowing
10 district attorneys to take action for certain
11 transmissions; establishing place of prosecution;
12 designating jurisdiction; defining violation and
13 setting penalty; prohibiting certain defense;
14 providing for codification; and providing an
15 effective date.

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

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1040.13b of Title 21, unless
19 there is created a duplication in numbering, reads as follows:

20 A. Whenever the district attorney for any district has
21 reasonable cause to believe that an individual, with knowledge of
22 its content, is engaged in sending a transmission or causing a
23 transmission to **originate within** this state containing obscene
24 material or child pornography, the district attorney for the
district into which the transmission is sent or caused to be sent,
may institute an action in the district court for an adjudication of
the obscenity or child pornographic content of the transmission.

1 Provided that if the conditions of subsection B of this section are
2 present, then it shall be at the discretion of the district attorney
3 whether the action instituted is a juvenile offense as defined in
4 subsection B of this section or whether the action instituted is a
5 felony for a violation of Section 1040.13a of Title 21 of the
6 Oklahoma Statutes.

7 The individual sending the transmission specified in this
8 section may be indicted and tried in any district wherein the
9 transmission is sent or in which it is received by the person to
10 whom it was transmitted.

11 For purposes of any criminal prosecution pursuant to a violation
12 of this section, the person violating the provisions of this section
13 shall be deemed to be within the jurisdiction of this state by the
14 fact of accessing any computer, cellular phone, or other computer-
15 related or satellite-operated device in this state, regardless of
16 the actual jurisdiction where the violator resides.

17 B. Any individual under eighteen (18) years of age who engages
18 in the original or relayed transmission of obscene or erotic
19 material via electronic media in the form of digital images, videos,
20 or other depictions of real persons under the age of eighteen (18)
21 years, and:

22 1. The original or relayed transmission is of another minor
23 over thirteen (13) years of age and is made with the consent of the
24 pictured individual and is transmitted to five (5) or fewer

1 individual destinations, known or unknown, shall be guilty of a
2 misdemeanor violation of this section punishable by:

- 3 a. a fine of **up to** Five Hundred Dollars (\$500.00) for the
4 first offense,
- 5 b. a fine of **up to** One Thousand Dollars (\$1,000.00) for a
6 second and subsequent offense,
- 7 c. up to forty (40) hours of community service, **or**
- 8 d. a referral to a juvenile bureau to propose a probation
9 plan which shall be adopted through disposition;

10 2. The original or relayed transmission is of another minor
11 over thirteen (13) years of age and is made without the consent of
12 the pictured individual, or is sent to six (6) or more individual
13 destinations, known or unknown, shall be guilty of a misdemeanor
14 violation of this section punishable by:

- 15 a. a fine of Seven Hundred Dollars (\$700.00) for the
16 first offense,
- 17 b. a fine of One Thousand Four Hundred Dollars
18 (\$1,400.00) for a second or subsequent offense,
- 19 c. up to sixty (60) hours of community service, and
- 20 d. a referral to a juvenile bureau to propose a probation
21 plan which shall be adopted through disposition; and

22 3. The original or relayed transmission is of another minor
23 thirteen (13) years of age or younger, with or without the pictured
24 individuals consent, and is transmitted to any number of

1 destinations, known or unknown, shall be guilty of a misdemeanor
2 violation of this section punishable by:

- 3 a. a fine of Nine Hundred Dollars (\$900.00) for the first
4 offense,
- 5 b. a fine of One Thousand Eight Hundred Dollars
6 (\$1,800.00) for a second or subsequent offense,
- 7 c. up to eighty (80) hours of community service, and
- 8 d. a referral to a juvenile bureau to propose a probation
9 plan which may be adopted through disposition.

10 C. The fact that the individual making the transmission and the
11 individual pictured are the same does not alter the criminality
12 provided in this section.

13 SECTION 2. This act shall become effective November 1, 2012.

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-21-12 - DO
15 PASS, As Amended and Coauthored.

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