STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2541

By: O'Donnell, Sherrer, Pittman and Ritze of the House

and

Griffin of the Senate

COMMITTEE SUBSTITUTE

An Act relating to sexting; amending Section 24, Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2013, Section 2-8-221), which relates to the transmission of obscenity and child pornography; providing statutory reference; modifying penalties; providing an affirmative defense; amending 70 O.S. 2011, Sections 24-100.3 and 24-100.4, as amended by Sections 2 and 3, Chapter 311, O.S.L. 2013 (70 O.S. Supp. 2013, Sections 24-100.3 and 24-100.4), which relate to the School Safety and Bullying Prevention Act; modifying and adding definition; providing for the development of a certain educational program; listing components of program; and providing an effective date.

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

SECTION 1. AMENDATORY Section 24, Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2013, Section 2-8-221), is amended to read as follows:

Section 2-8-221. A. Whenever the district attorney for any district has reasonable cause to believe that an individual, with knowledge of its content, is engaged in sending a transmission or

causing a transmission to originate within this state containing obscene material or child pornography, as such terms are defined in Section 1024.1 of Title 21 of the Oklahoma Statutes, 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. Provided that if the conditions of subsection B of this section are present, then it shall be at the discretion of the district attorney whether the action instituted is a juvenile offense as defined in subsection B of this section or whether the action instituted is a felony for a violation of Section 1040.13a of Title 21 of the Oklahoma Statutes.

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

For purposes of any criminal prosecution pursuant to a 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.

B. Any individual under eighteen (18) years of age who engages in the original or relayed transmission of obscene ~~or erotic~~

material or child pornography via electronic media in the form of digital images, videos, or other depictions of real persons under the age of eighteen (18) years, and:

1. The original or relayed transmission is of another minor over thirteen (13) years of age and is made with the consent of the pictured individual and is transmitted to five or fewer individual destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Five Hundred Dollars ($500.00) for the first offense,

b. a fine not to exceed One Thousand Dollars ($1,000.00) for a second and subsequent offense,

c. up to forty (40) hours of community service, ~~or~~

d. a referral to a juvenile bureau to propose a probation plan which shall be adopted through disposition, or

e. attendance and successful completion of an educational program as provided in Section 24-100.4 of Title 70 of the Oklahoma Statutes. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program;

2. The original or relayed transmission is of another minor over thirteen (13) years of age and is made without the consent of the pictured individual, or is sent to six or more individual

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

a. a fine not to exceed Seven Hundred Dollars ($700.00) for the first offense,

b. a fine not to exceed One Thousand Four Hundred Dollars ($1,400.00) for a second or subsequent offense,

c. up to sixty (60) hours of community service, ~~and~~

d. a referral to a juvenile bureau to propose a probation plan which shall be adopted through disposition, and

e. attendance and successful completion of an educational program as provided in Section 24-100.4 of Title 70 of the Oklahoma Statutes. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program; and

3. The original or relayed transmission is of another minor thirteen (13) years of age or younger, with or without the pictured individual's consent, and is transmitted to any number of destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Nine Hundred Dollars ($900.00) for the first offense,

b. a fine not to exceed One Thousand Eight Hundred Dollars ($1,800.00) for a second or subsequent offense,

c. up to eighty (80) hours of community service, ~~and~~

d. a referral to a juvenile bureau to propose a probation plan which may be adopted through disposition, and

e. attendance and successful completion of an educational program as provided in Section 24-100.4 of Title 70 of the Oklahoma Statutes. The court shall have the discretion to order the parent or legal guardian of the juvenile to attend and successfully complete the educational program.

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

D. It is an affirmative defense to the relayed transmission of obscene material or child pornography, as these terms are defined in Section 1024.1 of Title 21 of the Oklahoma Statutes, if a juvenile:

1. Has not solicited the visual depiction; and

2. Does not subsequently distribute, present, transmit, post, print, disseminate or exchange the visual depiction except for the purpose of reporting the original transmission or relayed transmission to appropriate school or law enforcement authorities.

SECTION 2. AMENDATORY 70 O.S. 2011, Section 24-100.3, as amended by Section 2, Chapter 311, O.S.L. 2013 (70 O.S. Supp. 2013, Section 24-100.3), is amended to read as follows:

Section 24-100.3 A. As used in the School Safety and Bullying Prevention Act:

1. "Bullying" means any pattern of harassment, intimidation, threatening behavior, physical acts, verbal or electronic communication directed toward a student or group of students that results in or is reasonably perceived as being done with the intent to cause negative educational or physical results for the targeted individual or group and is communicated in such a way as to disrupt or interfere with the school's educational mission or the education of any student;

2. "At school" means on school grounds, in school vehicles, at school-sponsored activities, or at school-sanctioned events;

3. "Electronic communication" means the communication of any written, verbal, pictorial information or video content by means of an electronic device, including, but not limited to, a telephone, a mobile or cellular telephone or other wireless telecommunication device, or a computer; ~~and~~

4. "Threatening behavior" means any pattern of behavior or isolated action, whether or not it is directed at another person, that a reasonable person would believe indicates potential for future harm to students, school personnel, or school property; and

5. "Obscene material" or "child pornography" shall have the same meaning as such terms are defined in Section 1024.1 of Title 21 of the Oklahoma Statutes.

B. Nothing in this act shall be construed to impose a specific liability on any school district.

SECTION 3. AMENDATORY 70 O.S. 2011, Section 24-100.4, as amended by Section 3, Chapter 311, O.S.L. 2013 (70 O.S. Supp. 2013, Section 24-100.4), is amended to read as follows:

Section 24-100.4 A. Each district board of education shall adopt a policy for the discipline of all children attending public school in that district, and for the investigation of reported incidents of bullying. The policy shall provide options for the discipline of the students and shall define standards of conduct to which students are expected to conform. The policy shall:

1. Specifically address bullying by students at school and by electronic communication, if the communication is specifically directed at students or school personnel and concerns bullying at school;

2. Contain a procedure for reporting an act of bullying to a school official, including a provision that permits a person to report an act anonymously. No formal disciplinary action shall be taken solely on the basis of an anonymous report;

3. Contain a requirement that any school employee that has reliable information that would lead a reasonable person to suspect

that a person is a target of bullying shall immediately report it to the principal or a designee of the principal;

4. Contain a statement of how the policy is to be publicized including a requirement that:

a. an annual written notice of the policy be provided to parents, guardians, staff, volunteers and students, with age-appropriate language for students,

b. notice of the policy be posted at various locations within each school site, including but not limited to cafeterias, school bulletin boards, and administration offices,

c. the policy be posted on the Internet website for the school district and each school site that has an Internet website, and

d. the policy be included in all student and employee handbooks;

5. Require that appropriate school district personnel involved in investigating reports of bullying make a determination regarding whether the conduct is actually occurring;

6. Contain a procedure for providing timely notification to the parents or guardians of a victim of documented and verified bullying and to the parents or guardians of the perpetrator of the documented and verified bullying;

7. Identify by job title the school official responsible for enforcing the policy;

8. Contain procedures for reporting to law enforcement all documented and verified acts of bullying which may constitute criminal activity or reasonably have the potential to endanger school safety;

9. Require annual training for administrators and school employees as developed and provided by the State Department of Education in preventing, identifying, responding to and reporting incidents of bullying;

10. Provide for an educational program as designed and developed by the State Department of Education for students and parents in preventing, identifying, responding to and reporting incidents of bullying;

11. <u>Provide for an educational program as designed and developed by the Office of Juvenile Affairs;</u>

<u>12.</u> Address prevention by providing:

a. consequences and remedial action for a person who commits an act of bullying,

b. consequences and remedial action for a student found to have falsely accused another as a means of retaliation, reprisal or as a means of bullying, and

c. a strategy for providing counseling or referral to appropriate services, including guidance, academic

intervention, and other protection for students, both targets and perpetrators, and family members affected by bullying, as necessary;

~~12.~~ 13. Establish a procedure for:

a. the investigation, determination and documentation of all incidents of bullying reported to school officials,

b. identifying the principal or a designee of the principal as the person responsible for investigating incidents of bullying,

c. reporting the number of incidents of bullying, and

d. determining the severity of the incidents and their potential to result in future violence;

~~13.~~ 14. Establish a procedure whereby, upon completing an investigation of bullying, a school may recommend that available community mental health care, substance abuse or other counseling options be provided to the student, if appropriate; and

~~14.~~ 15. Establish a procedure whereby a school may request the disclosure of any information concerning students who have received mental health, substance abuse, or other care pursuant to paragraph ~~13~~ 14 of this subsection that indicates an explicit threat to the safety of students or school personnel, provided the disclosure of the information does not violate the requirements and provisions of the Family Educational Rights and Privacy Act of 1974, the Health

Insurance Portability and Accountability Act of 1996, Section 2503 of Title 12 of the Oklahoma Statutes, Section 1376 of Title 59 of the Oklahoma Statutes, or any other state or federal laws regarding the disclosure of confidential information.

B. In developing the policy, the district board of education shall make an effort to involve the teachers, parents, administrators, school staff, school volunteers, community representatives, local law enforcement agencies and students. The students, teachers, and parents or guardian of every child residing within a school district shall be notified by the district board of education of its adoption of the policy and shall receive a copy upon request. The school district policy shall be implemented in a manner that is ongoing throughout the school year and is integrated with other violence prevention efforts.

C. The teacher of a child attending a public school shall have the same right as a parent or guardian to control and discipline such child according to district policies during the time the child is in attendance or in transit to or from the school or any other school function authorized by the school district or classroom presided over by the teacher.

D. Except concerning students on individualized education plans (IEP) pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. No. 101-476, the State Board of Education shall not have authority to prescribe student disciplinary policies for school

districts or to proscribe corporal punishment in the public schools. The State Board of Education shall not have authority to require school districts to file student disciplinary action reports more often than once each year and shall not use disciplinary action reports in determining a school district's or school site's eligibility for program assistance including competitive grants.

E. The board of education of each school district in this state shall have the option of adopting a dress code for students enrolled in the school district. The board of education of a school district shall also have the option of adopting a dress code which includes school uniforms.

F. The State Board of Education shall:

1. Promulgate rules for periodically monitoring school districts for compliance with this section and providing sanctions for noncompliance with this section;

2. Establish and maintain a central repository for the collection of information regarding documented and verified incidents of bullying; and

3. Publish a report annually on the State Department of Education website regarding the number of documented and verified incidents of bullying in the public schools in the state.

SECTION 4. This act shall become effective November 1, 2014.

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