

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2541

By: O'Donnell

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5
6 AS INTRODUCED

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

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

22 SECTION 1. AMENDATORY Section 24, Chapter 404, O.S.L.
23 2013 (10A O.S. Supp. 2013, Section 2-8-221), is amended to read as
24 follows:

25 Section 2-8-221. A. Whenever the district attorney for any
26 district has reasonable cause to believe that an individual, with
27 knowledge of its content, is engaged in sending a transmission or
28 causing a transmission to originate within this state containing
29 obscene material or child pornography, as such terms are defined in

1 Section 1024.1 of Title 21 of the Oklahoma Statutes, the district
2 attorney for the district into which the transmission is sent or
3 caused to be sent, may institute an action in the district court for
4 an adjudication of the obscenity or child pornographic content of
5 the transmission. Provided that if the conditions of subsection B
6 of this section are present, then it shall be at the discretion of
7 the district attorney whether the action instituted is a juvenile
8 offense as defined in subsection B of this section or whether the
9 action instituted is a felony for a violation of Section 1040.13a of
10 Title 21 of the Oklahoma Statutes.

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

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

21 B. Any individual under eighteen (18) years of age who engages
22 in the original or relayed transmission of obscene ~~er-erotic~~
23 material or child pornography via electronic media in the form of
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1 digital images, videos, or other depictions of real persons under
2 the age of eighteen (18) years, and:

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

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

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

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

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

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

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

- 3 a. a fine not to exceed Seven Hundred Dollars (\$700.00)
4 for the first offense,
- 5 b. a fine not to exceed One Thousand Four Hundred Dollars
6 (\$1,400.00) for a second or subsequent offense,
- 7 c. up to sixty (60) hours of community service, ~~and~~
- 8 d. a referral to a juvenile bureau to propose a probation
9 plan which shall be adopted through disposition, and
- 10 e. attendance and successful completion of an educational
11 program as provided in Section 24-100.4 of Title 70 of
12 the Oklahoma Statutes. The court shall have the
13 discretion to order the parent or legal guardian of
14 the juvenile to attend and successfully complete the
15 educational program; and

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

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

- 1 b. a fine not to exceed One Thousand Eight Hundred
2 Dollars (\$1,800.00) for a second or subsequent
3 offense,
4 c. up to eighty (80) hours of community service, ~~and~~
5 d. a referral to a juvenile bureau to propose a probation
6 plan which may be adopted through disposition, and
7 e. attendance and successful completion of an educational
8 program as provided in Section 24-100.4 of Title 70 of
9 the Oklahoma Statutes. The court shall have the
10 discretion to order the parent or legal guardian of
11 the juvenile to attend and successfully complete the
12 educational program.

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

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

- 19 1. Has not solicited the visual depiction; and
20 2. Does not subsequently distribute, present, transmit, post,
21 print, disseminate or exchange the visual depiction except for the
22 purpose of reporting the original transmission or relayed
23 transmission to appropriate school or law enforcement authorities.
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1 SECTION 2. AMENDATORY 70 O.S. 2011, Section 24-100.3, as
2 amended by Section 2, Chapter 311, O.S.L. 2013 (70 O.S. Supp. 2013,
3 Section 24-100.3), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 11. Provide for an educational program as designed and
16 developed by the State Department of Education and in consultation
17 with the Office of the Attorney General for students and parents
18 that addresses:

19 a. the possible legal consequences, which may include
20 criminal penalties, of sharing, by means of an
21 electronic communication, obscene material or child
22 pornography,

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1 b. other possible consequences of sharing, by means of an
2 electronic communication, obscene material or child
3 pornography, including:

4 (1) negative effects on relationships,

5 (2) loss of educational and employment opportunities,

6 and

7 (3) possible removal, if applicable, from certain

8 school programs or extracurricular activities,

9 c. the unique characteristics of the Internet and other
10 communications networks that could affect obscene
11 material or child pornography, including:

12 (1) search and replication capabilities, and

13 (2) a potentially worldwide audience,

14 d. the prevention of, identification of, responses to,
15 and reporting of incidents of cyberbullying, and

16 e. the connection between bullying, cyberbullying and a
17 minor sharing obscene material or child pornography;

18 12. Address prevention by providing:

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

21 b. consequences and remedial action for a student found
22 to have falsely accused another as a means of
23 retaliation, reprisal or as a means of bullying, and
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1 c. a strategy for providing counseling or referral to
2 appropriate services, including guidance, academic
3 intervention, and other protection for students, both
4 targets and perpetrators, and family members affected
5 by bullying, as necessary;

6 ~~12.~~ 13. Establish a procedure for:

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

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

13 c. reporting the number of incidents of bullying, and

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

16 ~~13.~~ 14. Establish a procedure whereby, upon completing an
17 investigation of bullying, a school may recommend that available
18 community mental health care, substance abuse or other counseling
19 options be provided to the student, if appropriate; and

20 ~~14.~~ 15. Establish a procedure whereby a school may request the
21 disclosure of any information concerning students who have received
22 mental health, substance abuse, or other care pursuant to paragraph
23 ~~13~~ 14 of this subsection that indicates an explicit threat to the
24 safety of students or school personnel, provided the disclosure of

1 the information does not violate the requirements and provisions of
2 the Family Educational Rights and Privacy Act of 1974, the Health
3 Insurance Portability and Accountability Act of 1996, Section 2503
4 of Title 12 of the Oklahoma Statutes, Section 1376 of Title 59 of
5 the Oklahoma Statutes, or any other state or federal laws regarding
6 the disclosure of confidential information.

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

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

23 D. Except concerning students on individualized education plans
24 (IEP) pursuant to the Individuals with Disabilities Education Act

1 (IDEA), P.L. No. 101-476, the State Board of Education shall not
2 have authority to prescribe student disciplinary policies for school
3 districts or to proscribe corporal punishment in the public schools.
4 The State Board of Education shall not have authority to require
5 school districts to file student disciplinary action reports more
6 often than once each year and shall not use disciplinary action
7 reports in determining a school district's or school site's
8 eligibility for program assistance including competitive grants.

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

14 F. The State Board of Education shall:

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

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

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

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

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