

05/16/2014 10:50:05 AM

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB2541**

By: ODonnell of the House and Griffin of the Senate

Title: Sexting; modifying penalties; effective date.


















Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its Senate Amendment No. 1; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

HB2541 CCR (A)  
**HOUSE CONFEREES**

Biggs, Scott R.		Echols, Jon	
Grau, Randy		Inman, Scott	
Johnson, Dennis		Jordan, Fred	
Martin, Steve		McCall, Charles A.	
McCullough, Mark		Morrisette, Richard	
Newell, Tom		O'Donnell, Terry	
Russ, Todd		Sherrer, Ben	
Stiles, Aaron		Virgin, Emily	
Williams, Cory T.			

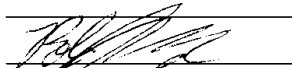
HB2541 CCR A

**SENATE CONFEREES**

Griffin



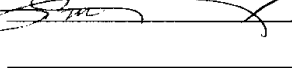
Sykes



Johnson (Rob)



Brinkley



McAffrey



Burrage

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_



STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2541

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

and

Griffin of the Senate

CONFERENCE 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, Section 24-100.4, as amended by Section 3, Chapter 311, O.S.L. 2013 (70 O.S. Supp. 2013, Section 24-100.4), which relates to the School Safety and Bullying Prevention Act; modifying policy requirements to include the development of certain educational program and approval of participation in certain alternative diversion 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:

1       Section 2-8-221. A. Whenever the district attorney for any  
2 district has reasonable cause to believe that an individual, with  
3 knowledge of its content, is engaged in sending a transmission or  
4 causing a transmission to originate within this state containing  
5 obscene material or child pornography, as such terms are defined in  
6 Section 1024.1 of Title 21 of the Oklahoma Statutes, the district  
7 attorney for the district into which the transmission is sent or  
8 caused to be sent, may institute an action in the district court for  
9 an adjudication of the obscenity or child pornographic content of  
10 the transmission. Provided that if the conditions of subsection B  
11 of this section are present, then it shall be at the discretion of  
12 the district attorney whether the action instituted is a juvenile  
13 offense as defined in subsection B of this section or whether the  
14 action instituted is a felony for a violation of Section 1040.13a of  
15 Title 21 of the Oklahoma Statutes.

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

20       For purposes of any criminal prosecution pursuant to a violation  
21 of this section, the person violating the provisions of this section  
22 shall be deemed to be within the jurisdiction of this state by the  
23 fact of accessing any computer, cellular phone, or other computer-

1 related or satellite-operated device in this state, regardless of  
2 the actual jurisdiction where the violator resides.

3 B. Any individual under eighteen (18) years of age who engages  
4 in the original or relayed transmission of obscene ~~or~~ ~~erotic~~  
5 material or child pornography via electronic media in the form of  
6 digital images, videos, or other depictions of real persons under  
7 the age of eighteen (18) years, and:

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

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

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

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

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

20 e. attendance and successful completion of an educational  
21 program or a delinquency prevention and diversion  
22 program as provided in Section 24-100.4 of Title 70 of  
23 the Oklahoma Statutes. The court shall have the  
24 discretion to order the parent or legal guardian of

1                   the juvenile to attend and successfully complete the  
2                   educational program;

3           2. The original or relayed transmission is of another minor  
4 over thirteen (13) years of age and is made without the consent of  
5 the pictured individual, or is sent to six or more 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 Seven Hundred Dollars (\$700.00)  
9           for the first offense,

10          b. a fine not to exceed One Thousand Four Hundred Dollars  
11           (\$1,400.00) for a second or subsequent offense,

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

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

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

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 individual's 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 not to exceed Nine Hundred Dollars (\$900.00)  
4 for the first offense,
- 5 b. a fine not to exceed One Thousand Eight Hundred  
6 Dollars (\$1,800.00) for a second or subsequent  
7 offense,
- 8 c. up to eighty (80) hours of community service, ~~and~~
- 9 d. a referral to a juvenile bureau to propose a probation  
10 plan which may be adopted through disposition, and
- 11 e. attendance and successful completion of an educational  
12 program or a delinquency prevention and diversion  
13 program as provided in Section 24-100.4 of Title 70 of  
14 the Oklahoma Statutes. The court shall have the  
15 discretion to order the parent or legal guardian of  
16 the juvenile to attend and successfully complete the  
17 educational program.

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

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

- 24 1. Has not solicited the visual depiction; and

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

5        SECTION 2.        AMENDATORY        70 O.S. 2011, Section 24-100.4, as  
6 amended by Section 3, Chapter 311, O.S.L. 2013 (70 O.S. Supp. 2013,  
7 Section 24-100.4), is amended to read as follows:

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

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

18        2. Contain a procedure for reporting an act of bullying to a  
19 school official or law enforcement agency, including a provision  
20 that permits a person to report an act anonymously. No formal  
21 disciplinary action shall be taken solely on the basis of an  
22 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 and in consultation  
13 with the Office of Juvenile Affairs for students and parents in  
14 preventing, identifying, responding to and reporting incidents of  
15 bullying;

16       11. Establish a procedure for referral of a person who commits  
17 an act of bullying to a delinquency prevention and diversion program  
18 administered by the Office of Juvenile Affairs;

19       12. Address prevention by providing:

- 20           a. consequences and remedial action for a person who
- 21           commits an act of bullying,
- 22           b. consequences and remedial action for a student found
- 23           to have falsely accused another as a means of
- 24           retaliation, reprisal or as a means of bullying, and

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

(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 3. This act shall become effective November 1, 2014.

54-2-10991        GRS        05/08/14