

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 54th Legislature (2014)

4   HOUSE BILL 2541

                              By: O'Donnell of the House

5   and

6   Griffin of the Senate

7  
8  
9   AS INTRODUCED

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

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

25                   SECTION 1.           AMENDATORY           Section 24, Chapter 404, O.S.L.  
26                   2013 (10A O.S. Supp. 2013, Section 2-8-221), is amended to read as  
27                   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-  
24

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 as provided in Section 24-100.4 of Title 70 of  
22 the Oklahoma Statutes. The court shall have the  
23 discretion to order the parent or legal guardian of  
24

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 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; and

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

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 as provided in Section 24-100.4 of Title 70 of  
13 the Oklahoma Statutes. The court shall have the  
14 discretion to order the parent or legal guardian of  
15 the juvenile to attend and successfully complete the  
16 educational program.

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

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

- 23 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 24-100.3, as  
6 amended by Section 2, Chapter 311, O.S.L. 2013 (70 O.S. Supp. 2013,  
7 Section 24-100.3), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

23       2. Contain a procedure for reporting an act of bullying to a  
24 school official, including a provision that permits a person to

1 report an act anonymously. No formal disciplinary action shall be  
2 taken solely on the basis of an anonymous report;

3 3. Contain a requirement that any school employee that has  
4 reliable information that would lead a reasonable person to suspect  
5 that a person is a target of bullying shall immediately report it to  
6 the principal or a designee of the principal;

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

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

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

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

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

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



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

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

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

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

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

19       11. Provide for an educational program as designed and  
20 developed by the State Department of Education and in consultation  
21 with the Office of the Attorney General for students and parents  
22 that addresses:

23        a. the possible legal consequences, which may include  
24 criminal penalties, of sharing, by means of an

electronic communication, obscene material or child pornography,

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

(1) negative effects on relationships,

(2) loss of educational and employment opportunities,  
and

(3) possible removal, if applicable, from certain school programs or extracurricular activities,

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

(1) search and replication capabilities, and

(2) a potentially worldwide audience,

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

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

12. Address prevention by providing:

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

1           b.     consequences and remedial action for a student found  
2                   to have falsely accused another as a means of

3                   retaliation, reprisal or as a means of bullying, and

4           c.     a strategy for providing counseling or referral to  
5                   appropriate services, including guidance, academic  
6                   intervention, and other protection for students, both  
7                   targets and perpetrators, and family members affected  
8                   by bullying, as necessary;

9     ~~12.~~ 13.   Establish a procedure for:

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

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

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

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

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

23     ~~14.~~ 15.   Establish a procedure whereby a school may request the  
24     disclosure of any information concerning students who have received

1 mental health, substance abuse, or other care pursuant to paragraph  
2 ~~13~~ 14 of this subsection that indicates an explicit threat to the  
3 safety of students or school personnel, provided the disclosure of  
4 the information does not violate the requirements and provisions of  
5 the Family Educational Rights and Privacy Act of 1974, the Health  
6 Insurance Portability and Accountability Act of 1996, Section 2503  
7 of Title 12 of the Oklahoma Statutes, Section 1376 of Title 59 of  
8 the Oklahoma Statutes, or any other state or federal laws regarding  
9 the disclosure of confidential information.

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

20 C. The teacher of a child attending a public school shall have  
21 the same right as a parent or guardian to control and discipline  
22 such child according to district policies during the time the child  
23 is in attendance or in transit to or from the school or any other  
24

1 school function authorized by the school district or classroom  
2 presided over by the teacher.

3 D. Except concerning students on individualized education plans  
4 (IEP) pursuant to the Individuals with Disabilities Education Act  
5 (IDEA), P.L. No. 101-476, the State Board of Education shall not  
6 have authority to prescribe student disciplinary policies for school  
7 districts or to proscribe corporal punishment in the public schools.  
8 The State Board of Education shall not have authority to require  
9 school districts to file student disciplinary action reports more  
10 often than once each year and shall not use disciplinary action  
11 reports in determining a school district's or school site's  
12 eligibility for program assistance including competitive grants.

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

18 F. The State Board of Education shall:

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

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

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

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

5  
6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/26/2014 - DO  
7 PASS, As Coauthored.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24