

1 **SENATE FLOOR VERSION**

2 February 19, 2020

3 **AS AMENDED**

4 SENATE BILL NO. 1462

5 By: David and Dossett

6 **[crime and punishment - nonconsensual dissemination**
7 **of private sexual images - authority - Sex Offenders**
8 **Registration Act -effective date]**

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY Section 1, Chapter 262, O.S.L.
12 2016 (21 O.S. Supp. 2019, Section 1040.13b), is amended to read as
13 follows:

14 Section 1040.13b. A. As used in this section:

15 1. "Image" includes a photograph, film, videotape, digital
16 recording or other depiction or portrayal of an object, including a
17 human body;

18 2. "Intimate parts" means the fully unclothed, partially
19 unclothed or transparently clothed genitals, pubic area or female
20 adult nipple; and

21 3. "Sexual act" means sexual intercourse including genital,
22 anal or oral sex.

23 B. A person commits nonconsensual dissemination of private
24 sexual images when he or she:

1 1. Intentionally disseminates an image of another person:

2 a. who is at least eighteen (18) years of age,

3 b. who is identifiable from the image itself or
4 information displayed in connection with the image,
5 and

6 c. who is engaged in a sexual act or whose intimate parts
7 are exposed, in whole or in part;

8 2. Disseminates the image with the intent to harass, intimidate
9 or coerce the person, or under circumstances in which a reasonable
10 person would know or understand that dissemination of the image
11 would harass, intimidate or coerce the person;

12 3. Obtains the image under circumstances in which a reasonable
13 person would know or understand that the image was to remain
14 private; and

15 4. Knows or a reasonable person should have known that the
16 person in the image has not consented to the dissemination.

17 C. The provisions of this section shall not apply to the
18 intentional dissemination of an image of another identifiable person
19 who is engaged in a sexual act or whose intimate parts are exposed
20 when:

21 1. The dissemination is made for the purpose of a criminal
22 investigation that is otherwise lawful;

23 2. The dissemination is for the purpose of, or in connection
24 with, the reporting of unlawful conduct;

1 3. The images involve voluntary exposure in public or
2 commercial settings; or

3 4. The dissemination serves a lawful purpose.

4 D. Nothing in this section shall be construed to impose
5 liability upon the following entities solely as a result of content
6 or information provided by another person:

7 1. An interactive computer service, as defined in 47 U.S.C.,
8 Section 230(f)(2);

9 2. A wireless service provider, as defined in Section 332(d) of
10 the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq.,
11 Federal Communications Commission rules, and the Omnibus Budget
12 Reconciliation Act of 1993, Pub. L. No. 103-66; or

13 3. A telecommunications network or broadband provider.

14 E. A person convicted under this section is subject to the
15 forfeiture provisions in Section 1040.54 of ~~Title 21 of the Oklahoma~~
16 ~~Statutes~~ this title.

17 F. Any person who violates the provisions of this section shall
18 be guilty of a misdemeanor punishable by imprisonment in a county
19 jail for not more than one (1) year or by a fine of not more than
20 One Thousand Dollars (\$1,000.00), or both such fine and
21 imprisonment.

22 G. Any person who violates the provisions of this section and
23 who gains or attempts to gain financially or who gains or attempts
24 to gain anything of value as a result of the nonconsensual

1 dissemination of private sexual images shall be guilty of a felony
2 punishable by imprisonment in the custody of the Department of
3 Corrections for not more than four (4) years. A second or
4 subsequent violation of this subsection shall be a felony punishable
5 by imprisonment in the custody of the Department of Corrections for
6 not more than ten (10) years and the offender shall be required to
7 register as a sex offender under the Sex Offender Registration Act.

8 H. The state shall not have the discretion to file a
9 misdemeanor charge, pursuant to Section 234 of Title 22 of the
10 Oklahoma Statutes, for a violation pursuant to subsection G of this
11 section.

12 I. The court shall have the authority to order the defendant to
13 remove the disseminated image should the court find it is in the
14 power of the defendant to do so.

15 SECTION 2. AMENDATORY Section 1, Chapter 219, O.S.L.
16 2016 (22 O.S. Supp. 2019, Section 234), is amended to read as
17 follows:

18 Section 234. When determining the appropriate charge for a
19 person accused of committing a criminal offense, the district
20 attorney shall have the discretion to file the charge as a
21 misdemeanor offense rather than a felony offense after considering
22 the following factors:
23
24

1 1. The criminal offense for which the person has been arrested
2 is not listed as a criminal offense in Section 13.1 or subsection G
3 of Section 1040.13b of Title 21 of the Oklahoma Statutes;

4 2. The nature of the criminal offense;

5 3. The age, background and criminal history of the person who
6 committed the criminal offense;

7 4. The character and rehabilitation needs of the person who
8 committed the criminal offense; and

9 5. Whether it is in the best interests of justice to file the
10 charge as a misdemeanor offense rather than a felony offense.

11 SECTION 3. AMENDATORY 57 O.S. 2011, Section 582, as last
12 amended by Section 2, Chapter 220, O.S.L. 2019 (57 O.S. Supp. 2019,
13 Section 582), is amended to read as follows:

14 Section 582. A. The provisions of the Sex Offenders
15 Registration Act shall apply to any person residing, working or
16 attending school within the State of Oklahoma who, after November 1,
17 1989, has been convicted, whether upon a verdict or plea of guilty
18 or upon a plea of nolo contendere, or received a suspended sentence
19 or any probationary term, or is currently serving a sentence or any
20 form of probation or parole for a crime or an attempt to commit a
21 crime provided for in Section 843.5 of Title 21 of the Oklahoma
22 Statutes if the offense involved sexual abuse or sexual exploitation
23 as those terms are defined in Section 1-1-105 of Title 10A of the
24 Oklahoma Statutes, Section 681, if the offense involved sexual

1 assault, 741, if the offense involved sexual abuse or sexual
2 exploitation, Section 748, if the offense involved human trafficking
3 for commercial sex, Section 843.1, if the offense involved sexual
4 abuse or sexual exploitation, Section 852.1, if the offense involved
5 sexual abuse of a child, 856, if the offense involved child
6 prostitution or human trafficking for commercial sex, 865 et seq.,
7 885, 886, 888, 891, if the offense involved sexual abuse or sexual
8 exploitation, 1021, 1021.2, 1021.3, 1024.2, 1029, if the offense
9 involved child prostitution, 1040.8, if the offense involved child
10 pornography, 1040.12a, 1040.13, 1040.13a, 1087, 1088, 1111.1, 1114
11 or 1123 of Title 21 of the Oklahoma Statutes.

12 B. The provisions of the Sex Offenders Registration Act shall
13 apply to any person who after November 1, 1989, resides, works or
14 attends school within the State of Oklahoma and who has been
15 convicted or received a suspended sentence at any time in any court
16 of another state, the District of Columbia, Puerto Rico, Guam,
17 American Samoa, the Northern Mariana Islands and the United States
18 Virgin Islands, a federal court, an Indian tribal court, a military
19 court, or a court of a foreign country for a crime, attempted crime
20 or a conspiracy to commit a crime which, if committed or attempted
21 in this state, would be a crime, an attempt to commit a crime or a
22 conspiracy to commit a crime provided for in any of ~~said~~ the laws
23 listed in subsection A of this section.

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1 C. The provisions of the Sex Offenders Registration Act shall
2 apply to any person who resides, works or attends school within the
3 State of Oklahoma and who has received a deferred judgment at any
4 time in any court of another state, the District of Columbia, Puerto
5 Rico, Guam, American Samoa, the Northern Mariana Islands and the
6 United States Virgin Islands, a federal court, an Indian tribal
7 court, a military court, or a court of a foreign country for a
8 crime, attempted crime or a conspiracy to commit a crime which, if
9 committed or attempted or conspired to be committed in this state,
10 would be a crime, an attempt to commit a crime or a conspiracy to
11 commit a crime provided for in Section 843.5 of Title 21 of the
12 Oklahoma Statutes if the offense involved sexual abuse or sexual
13 exploitation as those terms are defined in Section 1-1-105 of Title
14 10A of the Oklahoma Statutes, Section 681, if the offense involved
15 sexual assault, 741, if the offense involved sexual abuse or sexual
16 exploitation, Section 748, if the offense involved human trafficking
17 for commercial sex, Section 843.1, if the offense involved sexual
18 abuse or sexual exploitation, Section 852.1, if the offense involved
19 sexual abuse of a child, 856, if the offense involved child
20 prostitution or human trafficking for commercial sex, 865 et seq.,
21 885, 886, 888, 891, if the offense involved sexual abuse or sexual
22 exploitation, 1021, 1021.2, 1021.3, 1024.2, 1029, if the offense
23 involved child prostitution, 1040.8, if the offense involved child
24 pornography, 1040.12a, 1040.13, 1040.13a, 1087, 1088, 1111.1, 1114

1 or 1123 of Title 21 of the Oklahoma Statutes. The provisions of the
2 Sex Offenders Registration Act shall not apply to any such person
3 while the person is incarcerated in a maximum or medium correctional
4 institution of the Department of Corrections.

5 D. On ~~the effective date of this act~~ November 1, 2002, any
6 person registered as a sex offender pursuant to Section 741 of Title
7 21 of the Oklahoma Statutes shall be summarily removed from the Sex
8 Offender Registry by the Department of Corrections and all law
9 enforcement agencies of any political subdivision of this state,
10 unless the offense involved sexual abuse or sexual exploitation.

11 E. The provisions of the Sex Offenders Registration Act shall
12 not apply to any such person who has received a criminal history
13 records expungement for a conviction in another state for a crime or
14 attempted crime which, if committed or attempted in this state,
15 would be a crime or an attempt to commit a crime provided for in any
16 ~~said~~ laws listed in subsection A of this section.

17 F. The provisions of the Sex Offender Registration Act shall
18 apply to any person residing, working or attending school within
19 this state who, after the effective date of this act, has been
20 convicted, whether upon a verdict or plea of guilty or upon a plea
21 of nolo contendere, or received a suspended sentence or any
22 probationary term, or is currently serving a sentence or any form of
23 probation or parole for a crime or an attempt to commit a crime as

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1 provided for in subsection G of Section 1040.13b of Title 21 of the
2 Oklahoma Statutes.

3 G. The provisions of the Sex Offenders Registration Act shall
4 apply to any person who resides, works or attends school within this
5 state and who has received a deferred judgment at any time in any
6 court of another state, the District of Columbia, Puerto Rico, Guam,
7 American Samoa, the Northern Mariana Islands and the United States
8 Virgin Islands, a federal court, an Indian tribal court, a military
9 court, or a court of a foreign country for a crime, if committed in
10 this state, would be a crime, as provided for in subsection F of
11 Section 1040.13b of Title 21 of the Oklahoma Statutes. The
12 provisions of the Sex Offenders Registration Act shall not apply to
13 any such person while the person is incarcerated in a maximum or
14 medium correctional institution of the Department of Corrections.

15 SECTION 4. This act shall become effective November 1, 2020.

16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
17 February 19, 2020 - DO PASS AS AMENDED
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