HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

ENGROSSED SENATE
BILL NO. 1462

By: David and Dossett of the Senate

and

Echols of the House

An Act relating to crime and punishment; amending Section 1, Chapter 262, O.S.L. 2016 (21 O.S. Supp. 2019, Section 1040.13b), which relates to nonconsensual dissemination of private sexual images; modifying offense; providing penalty; limiting certain authority; amending Section 1, Chapter 219, O.S.L. 2016 (22 O.S. Supp. 2019, Section 234), which relates to discretion to charge as misdemeanor; modifying inclusions; amending 57 O.S. 2011, Section 582, as last amended by Section 2, Chapter 220, O.S.L. 2019 (57 O.S. Supp. 2019, Section 582), which relates to the applicability of the Sex Offenders Registration Act; modifying inclusions; updating statutory language; and providing an effective date.

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

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

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

1. “Image” includes a photograph, film, videotape, digital recording or other depiction or portrayal of an object, including a human body;

2. “Intimate parts” means the fully unclothed, partially unclothed or transparently clothed genitals, pubic area or female adult nipple; and

3. “Sexual act” means sexual intercourse including genital, anal or oral sex.

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

1. Intentionally disseminates an image of another person:

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

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

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

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

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

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

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

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

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

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

4. The dissemination serves a lawful purpose.

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

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

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

3. A telecommunications network or broadband provider.

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

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

G. Any person who violates the provisions of this section and who gains or attempts to gain financially or who gains or attempts to gain anything of value as a result of the nonconsensual dissemination of private sexual images shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than four (4) years. A second or subsequent violation of this subsection shall be a felony punishable by imprisonment in the custody of the Department of Corrections for not more than ten (10) years and the offender shall be required to register as a sex offender under the Sex Offenders Registration Act.

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

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

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

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

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

2. The nature of the criminal offense;

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

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

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

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

Section 582. A. The provisions of the Sex Offenders Registration Act shall apply to any person residing, working or attending school within the State of Oklahoma who, after November 1, 1989, has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term, or is currently serving a sentence or any form of probation or parole for a crime or an attempt to commit a crime provided for in Section 843.5 of Title 21 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, Section 681, if the offense involved sexual assault, 741, if the offense involved sexual abuse or sexual exploitation, Section 748, if the offense involved human trafficking for commercial sex, Section 843.1, if the offense involved sexual abuse or sexual exploitation, Section 852.1, if the offense involved sexual abuse of a child, 856, if the offense involved child prostitution or human trafficking for commercial sex, 865 et seq., 885, 886, 888, 891, if the offense involved sexual abuse or sexual exploitation, 1021, 1021.2, 1021.3, 1024.2, 1029, if the offense involved child prostitution, 1040.8, if the offense involved child pornography, 1040.12a, 1040.13, 1040.13a, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes.

B. The provisions of the Sex Offenders Registration Act shall apply to any person who after November 1, 1989, resides, works or

attends school within the State of Oklahoma and who has been convicted or received a suspended sentence at any time in any court of another state, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands and the United States Virgin Islands, a federal court, an Indian tribal court, a military court, or a court of a foreign country for a crime, attempted crime or a conspiracy to commit a crime which, if committed or attempted in this state, would be a crime, an attempt to commit a crime or a conspiracy to commit a crime provided for in any of ~~said~~ the laws listed in subsection A of this section.

C. The provisions of the Sex Offenders Registration Act shall apply to any person who resides, works or attends school within the State of Oklahoma and who has received a deferred judgment at any time in any court of another state, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands and the United States Virgin Islands, a federal court, an Indian tribal court, a military court, or a court of a foreign country for a crime, attempted crime or a conspiracy to commit a crime which, if committed or attempted or conspired to be committed in this state, would be a crime, an attempt to commit a crime or a conspiracy to commit a crime provided for in Section 843.5 of Title 21 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, Section 681, if the offense involved

sexual assault, 741, if the offense involved sexual abuse or sexual exploitation, Section 748, if the offense involved human trafficking for commercial sex, Section 843.1, if the offense involved sexual abuse or sexual exploitation, Section 852.1, if the offense involved sexual abuse of a child, 856, if the offense involved child prostitution or human trafficking for commercial sex, 865 et seq., 885, 886, 888, 891, if the offense involved sexual abuse or sexual exploitation, 1021, 1021.2, 1021.3, 1024.2, 1029, if the offense involved child prostitution, 1040.8, if the offense involved child pornography, 1040.12a, 1040.13, 1040.13a, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes. The provisions of the Sex Offenders Registration Act shall not apply to any such person while the person is incarcerated in a maximum or medium correctional institution of the Department of Corrections.

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

E. The provisions of the Sex Offenders Registration Act shall not apply to any such person who has received a criminal history records expungement for a conviction in another state for a crime or attempted crime which, if committed or attempted in this state,

would be a crime or an attempt to commit a crime provided for in any ~~said~~ laws listed in subsection A of this section.

F. The provisions of the Sex Offenders Registration Act shall apply to any person residing, working or attending school within this state who, after the effective date of this act, has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term, or is currently serving a sentence or any form of probation or parole for a crime or an attempt to commit a crime as provided for in subsection G of Section 1040.13b of Title 21 of the Oklahoma Statutes.

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

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

DIRECT TO CALENDAR.