

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 1440

 By: Hasenbeck

7 AS INTRODUCED

8 An Act relating to crimes and punishments; amending
9 21 O.S. 2021, Section 1040.13b, which relates to the
10 Oklahoma Law on Obscenity and Child Pornography;
11 providing statute of limitations for the
12 nonconsensual dissemination of private sexual images;
13 and providing an effective date.

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

15 SECTION 1. AMENDATORY 21 O.S. 2021, Section 1040.13b, is
16 amended to read as follows:

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

18 1. "Image" includes a photograph, film, videotape, digital
19 recording or other depiction or portrayal of an object, including a
20 human body;

21 2. "Intimate parts" means the fully unclothed, partially
22 unclothed or transparently clothed genitals, pubic area or female
23 adult nipple; and

1 3. "Sexual act" means sexual intercourse including genital,
2 anal or oral sex.

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

5 1. Intentionally disseminates an image of another person:

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

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

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

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

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

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

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

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

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

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

7 4. The dissemination serves a lawful purpose.

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

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

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

17 3. A telecommunications network or broadband provider.

18 E. A person convicted under this section is subject to the
19 forfeiture provisions in Section 1040.54 of this title.

20 F. Any person who violates the provisions of subsection B of
21 this section shall, upon conviction, be guilty of a misdemeanor
22 punishable by imprisonment in a county jail for not more than one
23 (1) year, or by a fine of not more than One Thousand Dollars
24 (\$1,000.00), or both such fine and imprisonment.

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

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

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

19 J. There is no limitation of the time within which a
20 prosecution for a violation of subsection B of this section must be
21 commenced. Such prosecution may be commenced at any time after the
22 discovery of the crime. For purposes of this subsection,
23 "discovery" means the date the crime is reported to a law
24 enforcement agency.

1 SECTION 2. This act shall become effective November 1, 2023.

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3 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
4 03/01/2023 - DO PASS.

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