



## SB 412 Factsheet

August 11, 2025

**DISCLAIMER:** The information documented below is intended to convey general information only and not to provide legal advice or opinions. The information shared below should not be construed as or be relied upon as legal advice in any particular circumstance or factual situation. The information may not reflect the most current legal developments. An attorney should be contacted for advice on specific legal questions, issues, and/or interpretation of the law.

This factsheet outlines our understanding of SB 412 and possible implications for libraries. Because Texas libraries operate under their own unique policies, procedures and legal interpretations, librarians should direct questions related to their organization's response to the appropriate person (supervisor, governing authority, etc.)

### Background

The Texas Penal Code is the primary source of criminal law in Texas, defining what actions are considered crimes and the penalties for those actions. Everyone is subject to the Texas Penal Code.

Texas Penal Code, Subchapter B, Section 43.24 Sale, Distribution, or Display of Harmful Material to Minor defines "harmful material" and establishes the offense of providing harmful materials to minors. For decades, that section of the penal code included an affirmative defense to prosecution if there was an educational justification.

The affirmative defense language was created to prevent frivolous lawsuits, and to encourage law enforcement and courts to only take up cases involving real harm.

### SB 412

**SB 412**, which was passed by the 89th Texas Legislature, signed by Governor Abbott, and becomes effective on September 1, 2025, amends the **Texas Penal Code, Subchapter B, Section 43.24 Sale, Distribution or Display of Harmful Material to Minor**, by repealing the language which stated "It is an affirmative defense to prosecution under this section that the sale, distribution or exhibition was by a person having a scientific, educational, governmental, or other similar justification."

It also adds new language clarifying that it is an affirmative defense to prosecution if the person was a judicial or law enforcement officer discharging the officer's official duties.

Texas Penal Code Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR.

(a) For purposes of this section:

- (1) "Minor" means an individual younger than 18 years.
- (2) "Harmful material" means material whose dominant theme taken as a whole:
  - (A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;
  - (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
  - (C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

- (1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;
- (2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or
- (3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2).

~~(c) It is an affirmative defense to prosecution under this section that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification.~~ **Strikethrough - REMOVED BY SB 412**

(c-1) It is a defense to prosecution under this section that the actor was the spouse of the minor at the time of the offense.

(c-2) It is an affirmative defense to prosecution that at the time of the offense the actor was a judicial or law enforcement officer discharging the officer's official duties.

**Underlined ADDED BY SB 412**

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) in which event it is a felony of the third degree.

## Enforcement

There are several steps in the enforcement of a criminal complaint:

- An individual makes a complaint to local law enforcement alleging that harmful material is available to minors in the library (or doctor's office, or bookstore, etc.).
- Law enforcement determines if the allegation warrants an investigation.
- If they decide to investigate, they will determine if the case should be referred to the district attorney.

- If the case is referred to the district attorney, they will determine whether it should be prosecuted.

**NOTE:** *These steps just highlight major points in the process; for more details on the criminal enforcement process, speak to an attorney.*

Some states have passed similar legislation (Arkansas, Oklahoma, Missouri), however **no librarians have been arrested or charged** for providing harmful material to minors since the affirmative defense language was removed.

## **Collection Development Implications**

SB 412 **does not** require libraries to review materials in their collection, establish age verification measures, restrict access to materials, or remove materials from the collection.

It also does not change the Texas Penal Code Section 43.24(a)(2) definition of “harmful material” which is:

Material whose dominant theme taken as a whole:

- Appeals to the prurient interest of a minor in sex, nudity, or excretion;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- Is utterly without redeeming social value for minors.

**All three of these criteria must be met for material to be considered harmful to minors.**

If law enforcement receives a complaint from an individual that obscene or harmful material is in a library, they must evaluate the material using this definition before determining if a violation has occurred.

Libraries should ensure that their collection development policies and procedures are up-to-date and that staff have been fully trained in selecting materials.

## **Protection for Librarians and Staff**

Individuals are justifiably fearful of the possible repercussions of a patron alleging that a particular book they don’t agree with is “obscene” and therefore, someone should be arrested.

Libraries should address potential exposure with a measured approach, relying on training, and strong policies and procedures. The following suggestions are actions libraries may want to consider based on their communities and staff concerns:

- Communicate with your governing authorities on material selection and circulation practices. Make sure they understand how materials are selected, the reconsideration process, circulation practices, etc. For example, leadership from a public library met with

their city's legal department and police department to share what the library processes are for selection of materials and explained how parents can curate their child's library experience. They also asked for step-by-step information on how the police department would handle any complaint that they received related to library materials. This information will be shared with library staff in training and documentation.

- Train staff on how to respond if a patron confronts them with the threat of prosecution, just as they are trained in how to respond to a patron wanting a book they don't like removed from the library, or any other challenging patron interaction.
- Train staff on how to respond if law enforcement enters the library asking about specific material, just as they are trained on other law enforcement issues.
- Consider developing fact sheets on the library's selection and reconsideration policies and process available for law enforcement, parents and anyone else that asks about the process.
- Consider developing fact sheets for parents on how they can curate their children's experience at the library.
- Discuss legal liability protection for staff with your governing body or supervisor.
- Purchase the [TLA Educator Professional Liability Insurance](#). The coverage year is January - December. You must be a current TLA member and work in a Texas library to purchase the insurance. You can purchase it when you join or renew your TLA membership. If you are already a member and want to purchase the insurance, you can buy it in the [TLA Store](#) online.

## **Conclusion**

This new law raises the threat of criminal prosecution for librarians and staff who are simply doing their jobs. Individuals are justifiably fearful of the possible repercussions of a patron alleging that a particular book they don't agree with is "obscene" and therefore, someone should be arrested.

However, it is critical that we do not give into fear and uncertainty. Rather, libraries should address potential exposure with a measured approach.