



## Opposition to SB 412

Regarding affirmative defenses to prosecution for certain offenses involving material or conduct

March 4, 2025

The **Association of Texas Professional Educators (ATPE)** offers the following input in opposition to **SB 412**.

Although we recognize the intent of this legislation, we have serious concerns about the removal of the "educational" justification as an affirmative defense under Texas Penal Code 43.24. We strongly urge the Committee to retain this defense to protect educators, librarians, and school administrators who provide students with access to widely acknowledged works of literature, art, and educational materials that may include themes related to sex or nudity but have clear educational and artistic merit.

Texas Penal Code 43.24 currently allows an affirmative defense if the sale, distribution, or exhibition of material deemed "harmful" to minors is justified for scientific, educational, governmental, or other similar purposes. Removing the "educational" justification may result in unintended consequences, including the chilling of classroom discussions and the unnecessary restriction of important literary and artistic works in school settings.

Numerous works of literature and art contain depictions or discussions of mature themes, including sex and nudity, but their educational value is widely recognized. Examples include:

Literature: *The Scarlet Letter* by Nathaniel Hawthorne, *Romeo and Juliet* by William Shakespeare, *Beloved* by Toni Morrison, and *Brave New World* by Aldous Huxley.

Art: Michelangelo's *David*, Botticelli's *The Birth of Venus*, and classical paintings depicting biblical and historical themes.

Educators and librarians must have the ability to present such materials in their proper educational contexts without fear of prosecution. Removing the affirmative defense would create uncertainty for teachers and could discourage schools from including valuable educational content that helps students develop critical thinking skills and a deep appreciation for classical literature and art.

Additionally, the ability of school districts to offer sex education curriculum relies on clear legal protection for educators. Texas already requires parents to "opt in" for their children to participate in sex education. If the "educational" justification is removed, teachers delivering approved curricula may be at legal risk, potentially leading to a decrease in the availability of

*The Association of Texas Professional Educators (ATPE) has been a strong voice for Texas educators since 1980. It is the leading educators' association in Texas. With its strong collaborative philosophy, ATPE speaks for classroom teachers, administrators, future, retired and para-educators and works to create better opportunities for more than 5 million public schoolchildren. ATPE is the ally and the voice of Texas public school educators.*

sex education, which is crucial for the health and well-being of students. This same logic may also well apply to certain biology lessons required under the Texas Essential Knowledge and Skills covering the reproduction and excretory systems.

We urge the Committee to amend SB 412 to retain the "educational" justification as an affirmative defense under Texas Penal Code 43.24. Doing so will ensure that teachers, librarians, and educators can continue to provide students with access to valuable literature, art, and sex education without fear of legal repercussions. The educational value of these materials is essential for fostering critical thinking, historical awareness, and cultural literacy among students in Texas. **We therefore respectfully urge members to OPPOSE SB 412.** For additional information, contact ATPE Governmental Relations at (800) 777-2873 or [government@atpe.org](mailto:government@atpe.org).