



House Bill 1217 FAQ

Does H.B. 1217 ban drag?

No. H.B. 1217 bans obscene performances on public property or in certain public spaces. Although people who oppose drag performances often use “obscurity” as a colloquial stand-in for drag performances, drag and gender nonconformity are not, by themselves, obscene. In fact, drag and gender nonconformity are constitutionally protected forms of expression. Moreover, Oklahoma law already criminalizes exhibitions of obscene material, and has done so for decades. H.B. 1217 constitutes a minimal change in the law, if it changes the law at all.

What is an obscene performance?

Obscenity is any depiction or description of sexual conduct that a) is patently offensive, according to contemporary community standards; b) appeals to the prurient interest, according to contemporary community standards; and c) totally lacks any redeeming social value in literature, art, education, politics, or science, according to national standards. Additionally, the courts have strongly suggested that before any person can be punished for obscenity, the government must show that the person’s action were intentional.

The U.S. Constitution requires the government to show that a form of expression meets each element of this definition of obscenity before it loses the protection of the First Amendment. Obscenity is among the most difficult standards in law for the government to satisfy. Satirical, comedic, or provocative depictions or descriptions of sexual conduct or gender do not satisfy this high standard. The vast, vast majority of drag performances are not obscene.

Expression that is not obscene is entitled to the full protections of the First Amendment. Expression that is obscene may be regulated, but the government must be viewpoint neutral. In other words, the government cannot regulate, prohibit, or punish a performance solely because it is done by someone in drag.

Where does H.B. 1217 apply?

Public property and public spaces. H.B. 1217 bans obscene performances on public property, which is any area owned by the government. H.B. 1217 also bans obscene performances in public spaces, which are privately owned areas that are freely open to the general public, only where a minor will (not might) be present. In other words, an obscene performance does not violate H.B. 1217 if it takes place in a public space, where a minor could or might be present; there must actually be a minor present. Additionally, public spaces are entitled to a safe harbor under the law: as long as public spaces have some kind of admissions process and restrict access to minors, they are exempt from the law. In other words, a public space that attempts to exclude minors will not violate the law if, inadvertently, a minor is present.

What are my rights?

If you are seeking to host an event on public property that requires a permit, local officials must comply with the First Amendment when granting or denying your request for a permit. Because H.B. 1217 regulates only obscene performances, which does not include drag, local officials cannot deny you a permit solely because your event contains a drag performance. Local officials can impose reasonable time, place, and manner restrictions on permitted events, so long as they are content and viewpoint neutral and allow ample alternative channels for free speech.

If you are seeking to host an event in a public space (an area that is privately owned but freely open to the general public), again, H.B. 1217 should not be cited as a reason to refuse your event. You should know, however, that private property owners can regulate or prohibit your speech however they see fit, including because they do not like drag. This is part of property owners' First Amendment right as well.

The First Amendment is most protective of your rights when you speak in a private space (privately owned and not open to the general public) or on public property that is a traditional public forum (public squares, sidewalks, streets, parks, and so forth).

You have the right not to speak with the police, whether you are detained or not. If you are detained, you should say: "I wish to speak to an attorney. I am exercising my right to remain silent." And then, say nothing else until an attorney arrives. Sign nothing without the presence of an attorney.

What should I do if I am affected by H.B. 1217?

Contact the ACLU of Oklahoma, at intake@acluok.org. As an organization with limited resources and capacity, we cannot guarantee that we will be able to respond or take action. But protecting free expression and the equality of 2SLGBTQ+ people in Oklahoma are among our highest priorities, and we are closely monitoring H.B. 1217's implementation on the ground. Whatever legislators call H.B. 1217, the law cannot and should not be used to restrict drag. If, however, local officials apply it against drag performers, that raises serious and grave concerns under the First and Fourteenth Amendments. Local officials should be aware that drag alone is not obscene under federal constitutional law and permitting for events on public property largely should not be affected by H.B. 1217.