

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1942

BY: SETTLE and LARASON

AS INTRODUCED

AN ACT RELATING TO CRIMES AND PUNISHMENTS; DEFINING TERMS; SPECIFYING WHAT CONSTITUTES THE SEXUAL CRIME OF RAPE, SPOUSAL RAPE, AGGRAVATED RAPE, RAPE BY INSTRUMENTATION, AGGRAVATED RAPE BY INSTRUMENTATION, FORCIBLE SODOMY, AGGRAVATED FORCIBLE SODOMY, CHILD SODOMY, AGGRAVATED CHILD SODOMY, LEWD MOLESTATION, LEWD PROPOSAL TO A CHILD, AND OFFENSIVE SEXUAL CONTACT; PROVIDING PENALTIES; REPEALING 21 O.S. 1991, SECTIONS 886, 887, 888, 1111, 1111.1, 1112, 1113, 1114, 1115, 1116 AND 1123, WHICH RELATE TO SEXUAL OFFENSES; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

In sexual crimes:

1. "Deceit" means the victim submits to sexual intercourse, sexual intrusion or sodomy under the belief that the person committing the act is that person's spouse, or as a result of the defendant's artifice, pretense, or concealment, the victim is

unaware that sexual intercourse, sexual intrusion or sodomy has taken place;

2. "Incapable of legally consenting" means being incapacitated or helpless, by reason of intoxication, unsoundness of mind or physical impairment, to such an extent that the person lacks the ability to effectively communicate unwillingness to participate in the act or to protect that person from the sexual intercourse, sexual intrusion or sodomy;

3. "Incapacitated" means any person who is disabled by reason of mental or physical illness or disability to the extent that the person lacks the ability to effectively engage in self protection;

4. "Sexual intercourse" means the actual contact of the sexual organs of a male and a female, with an actual penetration, however slight, into the body of the female;

5. "Sexual intrusion" means any unlawful penetration of the vagina or anus, however slight, by any animate or inanimate object, not amounting to sexual intercourse or sodomy;

6. "Sexual misconduct" means any behavior performed in a lewd and lascivious manner when such behavior relates in any way to sexual matters or sexual interest other than as these terms relate to obscenity or pornography;

7. "Sexual relations" means sexual intercourse, sodomy or sexual intrusion; and

8. "Sodomy" means sexual contact between persons of the same or the opposite sex involving the sex organs of one person and the anus of another with penetration, however slight, or the sex organs of one person and the mouth of the other.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Rape occurs when a person engages in sexual intercourse with another person who is not the spouse of the actor and:

1. Force or violence is used upon or threatened against the victim or another person in the immediate vicinity;

2. The victim is between thirteen (13) and sixteen (16) years of age and the actor is at least four (4) years older than the victim;

3. The victim is physically or mentally incapable of legally consenting to sexual intercourse;

4. Consent is obtained through deceit; or

5. Consent is obtained through the belief, intentionally induced by the actor, that engaging in sexual intercourse will influence the exercise of the actor's official authority as an employee or agent of an entity which has legal custody of the victim.

B. Spousal rape occurs when a person engages in sexual intercourse with one's own spouse and force or violence is used or threatened against the victim or another person in the immediate vicinity and:

1. A petition for divorce is pending;

2. A petition for legal separation is pending or has been granted;

3. A petition for a protective order as provided for by the provisions of Section 60.2 of Title 22 of the Oklahoma Statutes is pending or has been granted; or

4. The victim and actor are living separate and apart from each other.

C. Aggravated rape occurs when all of the elements of rape or spousal rape are present and, in addition:

1. It is accomplished by use of a dangerous weapon;

2. Serious bodily injury is inflicted upon the victim or another person in the immediate vicinity as a result of the crime;  
or

3. The victim is under thirteen (13) years of age.

D. Any person convicted of violating subsection A or B of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than twenty (20) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

E. Any person convicted of violating subsection C of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than ten (10) years or more than ninety-nine (99) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Rape by instrumentation occurs when a person commits an act of sexual intrusion upon another person and:

1. Force or violence is used or threatened against the victim or another person in the immediate vicinity;

2. The victim is between thirteen (13) and sixteen (16) years of age;

3. The victim is physically or mentally incapable of legally consenting to sexual intrusion;

4. Consent is obtained through deceit; or

5. Consent is obtained through the belief, intentionally induced by the actor, that engaging in sexual intrusion will influence the exercise of the actor's official authority as an employee or agent of an entity which has legal custody of the victim.

B. Aggravated rape by instrumentation occurs when all of the elements of rape by instrumentation are present and, in addition:

1. It is accomplished by use of a dangerous weapon;

2. Serious bodily injury is inflicted upon the victim as a result of the crime; or

3. The victim is under thirteen (13) years of age.

C. Any person convicted of violating subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than twenty (20) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

D. Any person convicted of violating subsection B of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than ten (10) years or more than ninety-nine (99) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.5 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Forcible sodomy occurs when two (2) persons engage in sodomy and:

1. Force or violence is used upon or threatened against the victim or another person in the immediate vicinity;

2. The victim is physically or mentally incapable of legally consenting to sodomy;

3. Consent is obtained through deceit; or

4. Consent is obtained through the belief, intentionally induced by the actor, that engaging in sodomy will influence the exercise of the actor's official authority as an employee or agent of an entity which has legal custody of the victim.

B. Aggravated forcible sodomy occurs when all of the elements of forcible sodomy are present and, in addition:

1. It is accomplished by use of a dangerous weapon; or

2. Serious bodily injury is inflicted upon the victim or another person in the immediate vicinity as a result of the crime.

C. Any person convicted of violating subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than twenty (20) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

D. Any person convicted of violating subsection B of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than ten (10) years or more than ninety-nine (99) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.6 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Child sodomy occurs when a person engages in sodomy with another person who is between thirteen (13) and sixteen (16) years of age and the actor is at least four (4) years older than the victim.

B. Aggravated child sodomy occurs when all of the elements of child sodomy are present and, in addition, the victim is under thirteen (13) years of age.

C. Any person convicted of violating subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than twenty (20) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

D. Any person convicted of violating subsection B of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than ten (10) years or more than ninety-nine (99) years, or by the imposition of a fine of not more

than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.7 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Lewd molestation occurs when a person intentionally touches the breasts, buttocks or genitalia of another person under sixteen (16) years of age in a lewd and lascivious manner and the actor is at least three (3) years older than the victim.

B. Any person convicted of violating subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than ten (10) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.8 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Lewd proposal to a child occurs when a person, who is at least three (3) years older than the victim:

1. Makes any oral or written proposal to a child under sixteen (16) years of age to engage in sexual misconduct or sexual relations with any person knowing the child is under sixteen (16) years of age; or

2. Asks, invites, entices or persuades a known child under sixteen (16) years of age to go with any person to a secluded, remote or secret place with the intent to engage in sexual misconduct or sexual relations.

B. Any person convicted of violating any provision of subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than ten (10) years, or by the imposition of a fine of not more than Fifty

Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.9 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Offensive sexual contact occurs when a person intentionally touches the breasts or genitalia of another person in a lewd and lascivious manner and without the consent of that person.

B. Any person convicted of violating subsection A of this section shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not less than ten (10) days or more than twelve (12) months, or by the imposition of a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

SECTION 9. REPEALER 21 O.S. 1991, Sections 886, 887, 888, 1111, 1111.1, 1112, 1113, 1114, 1115, 1116 and 1123, are hereby repealed.

SECTION 10. This act shall become effective September 1, 1992.

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