

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 629

By: Shurden

COMMITTEE SUBSTITUTE

[Criminal procedure - providing asexualization of
certain persons convicted of certain crimes -
directing certain review of sentence - providing
for voluntary asexualization -

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 997 of Title 22, unless there is
created a duplication in numbering, reads as follows:

As used in this act:

1. "Asexualization" or "asexualized" means the surgical removal
of the male testicles by a licensed physician;

2. "Sex crime" means rape in the first or second degree, as
defined by Section 1114 of Title 21 of the Oklahoma Statutes, or
forcible sodomy, as defined by Section 888 of Title 21 of the
Oklahoma Statutes;

3. "Aggravated circumstances" are:

- a. rape was committed against a child less than fourteen (14) years of age or sodomy was committed against a child less than sixteen (16) years of age,
- b. the sex crime was especially serious, atrocious, or cruel,
- c. the sex crime resulted in significant physical injury to the victim,
- d. the sex crime was committed upon one victim by the defendant two or more times within a twenty-four-hour period,
- e. the sex crime was committed upon one victim by two or more persons, acting in concert with the defendant,
- f. the sex crime was committed by a person while serving a sentence for a felony conviction, or while subject to any provision of a deferred prosecution agreement, deferred judgment, suspended sentence or parole,
- g. the existence of a prior juvenile adjudication for a sex crime,
- h. the existence of a prior conviction for a sex crime in this state or another state, and
- i. a high probability that the defendant would commit another sex crime and therefore is deemed an immediate and continuing threat to society.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If any person commits a sex crime as defined by Section 1 of this act, and the judge or jury, if the offense was presented to a jury for a determination of guilt, finds at least two aggravating circumstances as set forth in paragraph 3 of Section 1 of this act, then the judge may order the defendant asexualized. This punishment

may be imposed in addition to, or in lieu of, any punishment authorized by law for the offense.

B. Upon conviction and before final sentencing of a defendant for a sex crime, the court shall conduct a hearing to determine whether or not the defendant should be ordered asexualized. The hearing shall be conducted by the trial judge before the trial jury, if the offense was presented to a jury for a determination of guilt, as soon as practicable without any additional presentence investigation. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the hearing to determine whether or not the defendant should be asexualized shall be conducted before the court prior to final sentencing. In the hearing, evidence may be presented as to any aggravating or mitigating circumstances. Aggravating circumstances as set forth in paragraph 3 of Section 1 of this act must be proved beyond a reasonable doubt. If the district attorney fails to present any evidence of aggravating circumstances at the hearing, the judge shall dismiss the hearing and proceed to final sentencing. Only evidence in aggravation as the state has presented at trial or made known to the defendant prior to the asexualization hearing shall be admissible. The state and the defendant or counsel for the defendant shall be permitted to present their arguments for or against asexualization.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. At the conclusion of an asexualization hearing pursuant to the authority of Section 2 of this act, the trial judge shall:

1. Give the jury written instructions on aggravating circumstances as warranted by the evidence, if the hearing was conducted before the trial jury. The jury shall designate in writing, signed by the foreman of the jury, the statutory

aggravating circumstances which the jury unanimously found to exist beyond a reasonable doubt; or

2. In cases where the jury has been waived, the judge shall enumerate the aggravating circumstances for the record.

B. The penalty of asexualization may be imposed when at least two of the statutory aggravating circumstances enumerated in paragraph 3 of Section 1 of this act are found to exist as provided by paragraph 1 or 2 of subsection A of this section and the aggravating circumstances are not outweighed by the findings of one or more mitigating circumstances as determined by the judge.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Whenever the penalty of asexualization is imposed as authorized by this act, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Oklahoma Court of Criminal Appeals. The clerk of the trial court, within ten (10) days after receiving the transcript of the asexualization hearing, shall transmit the entire record with the transcript of the asexualization hearing to the Oklahoma Court of Criminal Appeals, together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant, the name and address of the attorney of record, a narrative statement of the judgment, the offense, and the punishment imposed. The report shall be in the form of a standard questionnaire prepared and supplied by the Oklahoma Court of Criminal Appeals.

B. The Oklahoma Court of Criminal Appeals shall consider the punishment as well as any errors in the asexualization hearing without the necessity of the defendant or counsel for the defendant enumerating any errors from the trial proceeding or making a direct appeal.

C. With regard to the review of the sentence for asexualization, the Oklahoma Court of Criminal Appeals shall determine:

1. Whether the sentence of asexualization was imposed under the influence of passion, prejudice, or any other arbitrary factor;

2. Whether the evidence supports the judge's or jury's findings of two or more statutory aggravating circumstances as enumerated in paragraph 3 of Section 1 of this act;

3. Whether the evidence supports the judge's findings that the mitigating circumstances did not outweigh the statutory aggravating circumstances enumerated in paragraph 3 of Section 1 of this act; and

4. Whether the sentence of asexualization is excessive or disproportionate to the penalty imposed in similar cases, considering both the offense and the defendant.

D. Both the defendant and the state shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.

E. The court shall include in its decision relating to the asexualization proceeding and judgment a reference to similar cases which it took into consideration. In addition to its authority to review enumerated errors in the trial proceeding pursuant to appeal the court, with regard to review of any sentence of asexualization authorized by this act, shall be authorized to:

1. Affirm the sentence of asexualization; or

2. Set the sentence of asexualization aside and remand the case for modification of the sentence.

F. The review of an order for asexualization by the Oklahoma Court of Criminal Appeals shall be in addition to direct appeal, if taken. If a direct appeal be made, the review of an order for asexualization shall be consolidated with the direct appeal for consideration. When a review of an order for asexualization has

been consolidated with a direct appeal, the court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the appropriateness of the sentence.

SECTION 5. NEW LAW A new section of law to codified in the Oklahoma States as Section 997.4 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If the defendant is sentenced to be asexualized as provided by the provisions of this act and to be imprisoned, the Department of Corrections shall secure the services of a licensed physician who is experienced in urogenital surgery. The selected physician shall be responsible for examination of the convicted person, scheduling suitable surgical facilities where the surgery will be performed, and surgically removing the male testicles of the defendant as required by law. The Department of Corrections shall bear all costs of the surgeon and surgical facilities for imprisoned persons.

B. If the defendant is sentenced to be asexualized as provided by the provisions of the act in lieu of imprisonment, the trial court shall either allow the defendant to select a licensed physician to perform the surgical procedure or commit the person to a state teaching hospital for the procedure. When the defendant is authorized to select a licensed physician to perform the asexualization procedure, the cost of the procedure shall be paid by the defendant. In other cases, the cost shall be paid by the state hospital.

C. The Department of Corrections and any licensed physician taking responsibility to asexualize a defendant pursuant to court order or voluntary request authorized by this act shall be immune from liability for performing the surgical procedure.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 888, as last amended by Section 264, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 888), is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony. Any person convicted of a violation of this section may be asexualized in addition to a term of imprisonment, or by asexualization in lieu of a term of imprisonment. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence and shall be asexualized prior to any parole or release from confinement. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole. Any person sentenced to a term of life may be asexualized prior to any parole or release from confinement.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or
2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or
3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime.

C. Any person sentenced to a term of imprisonment prior to the effective date of this act who voluntarily desires to be asexualized may petition the court for a hearing. Upon hearing and determination that it is in the best interests of the plaintiff and the public to asexualize the plaintiff while in the custody of the

Department of Corrections, the court shall order the procedure to take place. The Department of Corrections shall be required to carry out the court order for asexualization and to pay costs as provided in other asexualized procedures. Any person asexualized voluntarily pursuant to the authority of this subsection shall receive favorable consideration for parole after one (1) year of confinement following the surgical procedure; provided, however, the voluntary asexualization of any person is no guarantee or promise for parole or release from confinement.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1115, as amended by Section 292, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony. Any person convicted of a violation of this section may be asexualized in addition to any term of imprisonment, or by asexualization in lieu of any term of imprisonment. Any person sentenced to a term of imprisonment prior to the effective date of this act who voluntarily desires to be asexualized may petition the court for a hearing. Upon hearing and determination that it is in the best interests of the plaintiff and the public to asexualize the plaintiff while in the custody of the Department of Corrections, the court shall order the procedure to take place. The Department of Corrections shall be required to carry out the court order for asexualization and to pay costs as provided in other asexualized procedures. Any person asexualized voluntarily pursuant to the authority of this subsection shall receive favorable consideration for parole after one (1) year of confinement following the surgical procedure; provided, however, the voluntary asexualization of any person shall not be construed to be a guarantee or promise for parole or release from confinement.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 1116, as amended by Section 293, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 1116), is amended to read as follows:

Section 1116. Rape in the second degree is a felony. Any person convicted of a violation of this section may be asexualized in addition to any term of imprisonment, or by asexualization in lieu of any term of imprisonment. Any person sentenced to a term of imprisonment prior to the effective date of this act who voluntarily desires to be asexualized may petition the court for a hearing. Upon hearing and determination that it is in the best interests of the plaintiff and the public to asexualize the plaintiff while in the custody of the Department of Corrections, the court shall order the procedure to take place. The Department of Corrections shall be required to carry out the court order for asexualization and to pay costs as provided in other asexualized procedures. Any person asexualized voluntarily pursuant to the authority of this subsection shall receive favorable consideration for parole after one (1) year of confinement following the surgical procedure; provided, however, the voluntary asexualization of any person shall not be construed to be a guarantee or promise for parole or release from confinement.

SECTION 9. This act shall become effective November 1, 1998.

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