

SHORT TITLE: Criminal procedure; providing for asexualization of certain persons convicted of certain crimes; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 629

By: Shurden

AS INTRODUCED

An Act relating to criminal procedure; defining terms; providing asexualization of certain persons convicted of certain crimes; providing for hearing and evidence; requiring certain written instructions and findings; directing certain review of sentence; requiring certain determination; providing review in addition to direct appeal; directing certain execution of the sentence; providing for payment of costs; amending 21 O.S. 1991, Sections 888, as amended by Section 2, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1996, Section 888), 1115 and 1116, which relate to forcible sodomy, rape in the first degree, and rape in the second degree; modifying penalties to allow for asexualization; modifying language; establishing procedure for asexualization of certain persons in custody; 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 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 finds at least two aggravating circumstances as set forth in paragraph 3 of Section 1 of this act, then the defendant may be ordered 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 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 mitigating circumstances and at least two aggravating circumstances as set forth in paragraph 3 of Section 1 of this act shall be proved beyond a reasonable doubt. 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:

At the conclusion of an asexualization hearing pursuant to the authority of Section 2 of this act, the trial judge shall give the jury written instructions as warranted by the evidence. The jury,

if its verdict is a unanimous recommendation for asexualization, 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. In cases where the jury has been waived, the judge shall enumerate the aggravating circumstances for the record. The penalty of asexualization shall 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 and the aggravating circumstances are not outweighed by the findings of one or more mitigating circumstances.

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 or jury'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.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 888, as amended by Section 2, Chapter 289, O.S.L. 1992 (21 O.S.Supp. 1996, 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 punishable by imprisonment in the ~~penitentiary~~ custody of the Department of Corrections for a ~~period~~ term of not more than twenty

(20) years, by asexualization 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~~ custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fail or refuse to fix punishment then the same shall be pronounced by the court. 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 or community assignment after one (1) year of confinement following the surgical procedure; provided, however, the voluntary asexualization of any person is no guarantee or promise for early release from confinement.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1115, is amended to read as follows:

Section 1115. Rape in the first degree is punishable by death, or imprisonment in the ~~penitentiary,~~ custody of the Department of Corrections for a term of not less than five (5) years, in the discretion of the jury, or in case the jury fail or refuse to fix the punishment then the same shall be pronounced by the court, and by asexualization 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 or community assignment 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 early release from confinement.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 1116, is amended to read as follows:

Section 1116. Rape in the second degree is punishable by imprisonment in the ~~penitentiary~~ custody of the Department of Corrections for a term of not less than one (1) year nor more than fifteen (15) years, by asexualization 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 or community assignment 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 early release from confinement.

SECTION 9. This act shall become effective November 1, 1997.

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