ENGROSSED SENATE
BILL NO. 454

By: Shurden and Campbell of the Senate

and

Erwin of the House

[criminal procedure - chemical castration - voluntary asexualization – codification - effective date - emergency]

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. "Chemical castration" or "chemically castrated" means the administration of pharmaceutical substances or hormones prescribed by a licensed physician to a person to remove sexual desire and aggression;

3. "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; and

4. "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 sex crime conviction, or while subject to any provision of a deferred prosecution agreement, deferred judgment, suspended sentence, postimprisonment supervision, or parole for a sex crime,

g. the existence of a prior juvenile delinquency adjudication for a sex crime, and

h. the existence of a prior conviction for a sex crime in this state or another state.

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. On and after the effective date of this act, any person who commits a sex crime as defined by Section 1 of this act, shall be subject to the provisions of this act and may be punished by chemical castration in addition to any other penalty allowed by law for the offense. Any person having been convicted of a sex crime as defined in Section 1 of this act prior to the effective date of this act may voluntarily consent to be asexualized as provided in Section 6 of this act. The Pardon and Parole Board may require chemical castration as a condition of release to parole for inmates convicted of a sex crime defined by Section 1 of this act, if the inmate is not asexualized at the time of parole consideration. Except when a deferred or suspended sentence is prohibited by law, the court may

require chemical castration as a condition of a deferred judgment or suspended sentence for a sex crime defined in Section 1 of this act, and chemical castration may be ordered as a condition of postimprisonment supervision.

B. Upon conviction and before final sentencing of a defendant for a sex crime as defined in Section 1 of this act, the court shall conduct a hearing to determine whether or not the defendant should be ordered chemically castrated in addition to any punishment allowable for the offense. The hearing shall be conducted by the trial judge as soon as practicable without any additional presentence investigation, or the hearing may be conducted before the trial jury, if the offense was presented to a jury for a determination of guilt and the jury will make the sentencing recommendations. If the trial jury has been waived by the defendant and the state, or if the jury will not make the sentencing recommendations, or if the defendant pleaded guilty or nolo contendere, the hearing shall be conducted before the judge.

C. In the hearing, evidence may be presented as to any aggravating or mitigating circumstances. Aggravating circumstances as set forth in paragraph 4 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 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 or chemical castration.

D. Any defendant who, while subject to an order for chemical castration, is convicted of a second or subsequent sex crime as defined in Section 1 of this act may be asexualized in addition to any punishment authorized by law for the offense. The hearing shall

be as provided in this section and Section 3 of this act. An order for asexualization shall be automatically reviewed as provided in Section 4 of this act.

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. When the judge or jury, if the case was presented to a jury for a determination of guilt and the jury will make the sentencing recommendation, finds at least two aggravating circumstances as set forth in paragraph 4 of Section 1 of this act, then the judge may order the defendant chemically castrated or may order the defendant asexualized as authorized by subsection D of Section 2 of this act. Chemical castration or asexualization may not be ordered when the aggravating circumstances are outweighed by the findings of one or more mitigating circumstances. Provided, however, before asexualization may be ordered there must have been a deoxyribonucleic acid (DNA) test submitted as evidence for the purpose of determining guilt with a positive identification made against the defendant by means of such test, unless the defendant voluntarily waives this requirement.

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

1. If the hearing was conducted before the trial jury and the jury will make the sentencing recommendations, give the jury written instructions on aggravating circumstances as warranted by the evidence. 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 and whether the aggravating circumstances were outweighed by any mitigating circumstances as determined by the jury; or

2. Enumerate for the record the aggravating circumstances the judge found to exist beyond a reasonable doubt and whether the

aggravating circumstances were outweighed by any 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 subsection D of Section 2 of this act, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Court of Criminal Appeals. The clerk of the trial court, within ten (10) days after receiving the transcript of the hearing provided by this act, shall transmit the entire record with the transcript of the hearing to the 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, including asexualization and any other provisions. The report shall be in the form of a standard questionnaire prepared and supplied by the Court of Criminal Appeals.

B. The Court of Criminal Appeals shall consider the asexualization order as well as any errors in the hearing required by this act 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 Court of Criminal Appeals shall determine:

1. Whether the defendant was eligible for the punishment of asexualization as provided in subsection D of Section 2 of this act;

2. Whether the sentence of asexualization was imposed under the influence of prejudice or other arbitrary factor;

3. Whether the evidence supports the findings of two or more statutory aggravating circumstances as enumerated in paragraph 4 of Section 1 of this act; and

4. Whether the evidence supports the findings that the mitigating circumstances did not outweigh the findings of the statutory aggravating circumstances.

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 of Criminal Appeals shall include in its decision relating to the asexualization proceeding and order a reference to the factors taken into consideration. In addition to the court's authority to review enumerated errors in the trial proceeding pursuant to direct appeal, the Court of Criminal Appeals, with regard to the review of any asexualization order, is 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 asexualization order by the Court of Criminal Appeals shall be in addition to direct appeal, if taken. If a direct appeal be made, the review of an asexualization order shall be consolidated with the direct appeal for consideration. When a review of an asexualization order has been consolidated with a direct appeal, the Court of Criminal Appeals shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the provisions of the sentence.

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

A. If a defendant is ordered asexualized as provided by the provisions of this act in addition to a term of imprisonment, the Department of Corrections shall secure the services of a licensed

physician for the asexualization procedure which shall be completed prior to release of the person from confinement, to parole, to a suspended sentence, or to a period of postimprisonment supervision. The Department of Corrections shall bear all costs of the surgeon and surgical facilities for persons receiving asexualization, except as provided in subsection B of this section. An asexualization procedure may be scheduled to be performed thirty (30) days following the date of the appeal decision authorized in Section 4 of this act or any time thereafter, but before release from custody. The imposition of the death penalty in any case shall not abrogate the responsibility of the Department of Corrections to schedule and have performed an asexualization procedure on the defendant prior to execution if the court orders asexualization pursuant to this act and the Court of Criminal Appeals affirms the sentence of asexualization.

B. On the effective date of this act, any person in the custody of the Department of Corrections for a sex crime as defined in Section 1 of this act who voluntarily consents to be asexualized shall be allowed to select a licensed physician to perform the surgical procedure; provided, however, the person shall pay the cost of the procedure and the surgeon.

C. Any licensed physician selected to perform an asexualization procedure shall be responsible for examination of the person, scheduling suitable surgical facilities where the surgery will be performed, and for surgically removing the male testicles of the person as required by court order or voluntary consent.

D. The Department of Corrections shall be immune from liability for scheduling the surgical procedure, facilities, and selecting the licensed physician to perform the procedure.

E. Any licensed physician who performs an asexualization procedure is not liable for an act or omission relating to the procedure, unless the act or omission constitutes negligence.

F. When a defendant is ordered chemically castrated in addition to any other penalty allowed by law for the offense or when chemical castration is ordered as a condition of a deferred or suspended sentence or as a condition of parole or postimprisonment supervision, the Department of Corrections shall require the defendant to submit to the prescribed treatment to effect chemical castration. The Department shall bear the cost of said treatment, unless it is determined by the Department that the defendant has the ability to pay all or part of such treatment. Failure of the defendant to submit to chemical castration when ordered as a condition of release is grounds for revocation of the sentence, parole or postimprisonment supervision.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.5 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. On the effective date of this act, any person incarcerated in the Department of Corrections who desires to be asexualized may voluntarily request such procedure from the Department of Corrections. The Department shall not be required to file a petition for a court order on behalf of the inmate requesting asexualization, but the Department shall perform the procedure only if:

1. The inmate is twenty-one (21) years of age or older;

2. The inmate requests the procedure in writing;

3. The inmate has signed a statement admitting the offense for which he was convicted and such offense is one of the enumerated sex crimes as defined by Section 1 of this act;

4. A psychiatrist and a psychologist who are appointed by the Department and have experience in the treatment of sex offenders have evaluated the inmate and have determined that the inmate is a suitable candidate for the procedure, the inmate is free from coercion in his decision to have the asexualization procedure, and

the inmate has received counseling prior to undergoing the procedure;

5. The inmate has not previously requested the procedure and subsequently withdrawn the request; and

6. The physician performing the procedure has obtained the informed written consent of the inmate to undergo the procedure.

B. An inmate voluntarily requesting asexualization may withdraw the request any time before the physician performs the procedure. Any inmate who withdraws a request for asexualization is ineligible to have the procedure performed by the Department at any other time.

C. Any inmate voluntarily requesting asexualization may select a physician to perform the procedure; provided the inmate pays the cost of the procedure and surgeon.

D. Any licensed physician who performs an asexualization procedure is not liable for an act or omission relating to the procedure, unless the act or omission constitutes negligence.

E. The Department of Corrections shall be immune from liability for scheduling the surgical procedure, facilities, and selecting the licensed physician to perform the procedure.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 888, as amended by Section 2, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1998, 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 for a period of not more than twenty (20) years. 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. 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, 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. On and after the effective date of this act, any person convicted of any violation of this section may be chemically castrated as provided in subsection A of Section 2 of this act or asexualized as provided in subsection D of Section 2 of this act in addition to a term of imprisonment. Any person convicted of a violation of this section prior to the effective date of this act may voluntarily request asexualization as provided in Section 6 of this act.

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 voluntarily asexualized pursuant to the authority of Section 6 of this act may receive a favorable consideration for parole after one (1) year of confinement following the surgical procedure; provided, however, the voluntary asexualization of any person shall not guarantee parole release from confinement.

D. The provisions of this section shall be superseded on the effective date of Sections 20.1, 20.2, 20.3 and 20.4 of this title.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 888, as amended by Section 264, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, 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 as provided in the state's sentencing matrix. 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 punished by imprisonment as provided in the state's sentencing matrix. 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. On and after the effective date of this section, any person convicted of any violation of this section may be chemically castrated as provided in subsection A of Section 2 of this act or asexualized as provided in subsection D of Section 2 of this act in addition to a term of imprisonment. Any person convicted of a violation of this section prior to the effective date of this act may voluntarily request asexualization as provided in Section 6 of this act.

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 voluntarily asexualized pursuant to the authority of Section 6 of this act may 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 guarantee parole release from confinement.

D. The provisions of this section shall become effective on the effective date of Sections 20.1, 20.2, 20.3 and 20.4 of this title.

SECTION 9. 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, 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. On and after the effective date of this act, any person convicted of a violation of this section may be chemically castrated as provided in subsection A of Section 2 of this act or asexualized as provided in subsection D of Section 2 of this act in addition to any term of imprisonment. Any person convicted of a violation of this section and sentenced to a term of imprisonment prior to the effective date of this act may voluntarily request asexualization as provided in Section 6 of this act. Any person asexualized voluntarily pursuant to the authority of Section 6 of this act may 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 guarantee parole release from confinement.

The provisions of this section shall be superseded on the effective date of Sections 20.1, 20.2, 20.3 and 20.4 of this title.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 1115, as amended by Section 292, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by imprisonment as provided in the state's sentencing matrix. On and after the effective date of this section, any person convicted

of a second or subsequent violation of this section may be chemically castrated as provided in subsection A of Section 2 of this act. Any person convicted of a violation of this section may be asexualized as provided in subsection D of Section 2 of this act in addition to any term of imprisonment. Any person convicted of a violation of this section and sentenced to a term of imprisonment prior to the effective date of this act may voluntarily request asexualization as provided in Section 6 of this act. Any person asexualized voluntarily pursuant to the authority of Section 6 of this act may 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 guarantee parole release from confinement.

The provisions of this section shall become effective on the effective date of Sections 20.1, 20.2, 20.3 and 20.4 of this title.

SECTION 11. 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 not less than one (1) year nor more than fifteen (15) years. On and after the effective date of this act, any person convicted of a second or subsequent violation of this section may be chemically castrated as provided in subsection A of Section 2 of this act. Any person convicted of a violation of this section may be asexualized as provided in subsection D of Section 2 of this act in addition to any term of imprisonment. Any person convicted of a violation of this section and sentenced to a term of imprisonment prior to the effective date of this act may voluntarily request asexualization as provided in Section 6 of this act. Any person asexualized voluntarily pursuant to the authority of Section 6 of this act may 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 guarantee parole or release from confinement.

The provisions of this section shall be superseded on the effective date of Sections 20.1, 20.2, 20.3 and 20.4 of this title.

SECTION 12. AMENDATORY 21 O.S. 1991, Section 1116, as amended by Section 293, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1116), is amended to read as follows:

Section 1116. Rape in the second degree is a felony punishable by imprisonment as provided in the state's sentencing matrix. On and after the effective date of this section, any person convicted of a second or subsequent violation of this section may be chemically castrated as provided in subsection A of Section 2 of this act. Any person convicted of a violation of this section may be asexualized as provided in subsection D of Section 2 of this act in addition to any term of imprisonment. Any person convicted of a violation of this section and sentenced to a term of imprisonment prior to the effective date of this act may voluntarily request asexualization as provided in Section 6 of this act. Any person asexualized voluntarily pursuant to the authority of Section 6 of this act may 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 guarantee parole or release from confinement.

The provisions of this section shall become effective on the effective date of Sections 20.1, 20.2, 20.3 and 20.4 of this title.

SECTION 13. This act shall become effective July 1, 1999.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this resolution shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 10th day of March, 1999.

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President of the Senate

Passed the House of Representatives the ____ day of _____ , 1999.

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Speaker of the House of Representatives