STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1012 By: Sullivan (John)

AS INTRODUCED

An Act relating to children; providing short title; stating legislative findings; amending 21 O.S. 1991, Section 843, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last amended by Section 127, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7115), which relates to abuse or neglect of children; modifying penalty; amending 21 O.S. 1991, Sections 1021, as last amended by Section 276, Chapter 133, O.S.L. 1997, 1021.2, as last amended by Section 277, Chapter 133, O.S.L. 1997, 1021.3, as last amended by Section 278, Chapter 133, O.S.L. 1997, and 1021.4 (21 O.S. Supp. 1998, Sections 1021, 1021.2 and 1021.3), which relate to obscenity; modifying penalties; amending 63 O.S. 1991, Section 2-401, as last amended by Section 529, Chapter 133, O.S.L. 1997 (63 O.S. Supp. 1998, Section 2-401), which relates to the Uniform Controlled Dangerous Substances Act; modifying penalties under certain circumstances; amending 21 O.S. 1991, Section 701.12, which relates to death penalty; adding aggravating circumstance; providing for noncodification; 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 not to be codified in the Oklahoma Statutes reads as follows:

Sections 2 through 8 of this act shall be known and may be cited as the "Child Protection Act".

It is the intent of this act to strengthen the criminal penalties for certain lawbreakers who prey upon the trusting nature of children. It is further the purpose of this act to encourage the entire criminal justice community to deal with these offenders in the most punitive manner possible.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 843, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last

amended by Section 127, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1998, Section 7115), is amended to read as follows:

Section 7115. Any parent or other person who shall willfully or maliciously engage in child abuse or neglect or who shall otherwise willfully or maliciously injure, torture, maim, use unreasonable force upon a child under the age of eighteen (18), or sexually abuse, sexually exploit or otherwise abuse or neglect such child, or who shall willfully or maliciously cause, procure or permit any of said acts to be done, shall upon conviction be guilty of a felony, punishable by imprisonment in the State Penitentiary for a period of not less than five (5) years nor more than life imprisonment. The fine for a violation of this section shall not be less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00). As used in this section, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this section.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1021, as last amended by Section 276, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1021), is amended to read as follows:

Section 1021. A. Every person who willfully either:

1. Lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;

2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, or exhibits any

obscene or indecent writing, paper, book, picture, photograph, motion picture, figure, form of any description or any type of obscene material; or

4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or any other kind of sound recording of any obscene or indecent language, poetry, or songs, or who speaks any words by means of a telephone to any person which are offensive to decency or are calculated to excite vicious or lewd thoughts or acts, or who speaks any other communicable words which are offensive to decency or are adapted to excite vicious or lewd thoughts or acts,

shall be guilty, upon conviction, of a felony, punishable by imprisonment in a state correctional facility for not less than one (1) nor more than ten (10) years and shall not be eligible for probation, a suspended sentence or a deferred sentence. The fine for a violation of this subsection shall not be less than Five Hundred Dollars ($500.00) nor more than Twenty Thousand Dollars ($20,000.00). ~~Persons convicted under paragraphs 3 and 4 of subsection A of this section shall not be eligible for a deferred sentence.~~

B. Every person who:

1. Willfully solicits or aids a minor child to perform; or

2. Shows, exhibits, loans, or distributes to a minor child any obscene or indecent writing, paper, book, picture, photograph, motion picture, figure, or form of any description, or any type of obscene material for the purpose of inducing said minor to participate in~~,~~ any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section,

shall be guilty, upon conviction, of a felony, punishable by imprisonment in a state correctional facility for not less than ten (10) nor more than thirty (30) years and shall not be eligible for

probation, a suspended sentence or a deferred sentence. ~~Persons convicted under this subsection shall not be eligible for a deferred sentence~~.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1021.2, as last amended by Section 277, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1021.2), is amended to read as follows:

Section 1021.2 Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any film, motion picture, videotape, photograph, negative, slide, drawing, painting, play, performance or any type of obscene material wherein the minor is engaged in or portrayed, depicted, or represented as engaging in any act of sexual intercourse, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual activity, in any lewd exhibition of the uncovered genitals or pubic area or areola of the breasts in the context of masturbation or other sexual activity, or in any other exhibition of the uncovered genitals or pubic area or areola of the breasts having the purpose of sexual stimulation of the viewer, or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any obscene material involving the participation of any minor under the age of eighteen (18) shall be guilty, upon conviction, of a felony, punishable by imprisonment in a state correctional facility for a period of not less than two (2) nor more than twenty (20) years. The fine for a violation of this section shall not be more than Twenty-five Thousand Dollars ($25,000.00). Persons convicted under this section shall not be eligible for probation, a suspended sentence or a deferred sentence. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1021.3, as last amended by Section 278, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1998, Section 1021.3), is amended to read as follows:

Section 1021.3 Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any film, motion picture, videotape, photograph, negative, slide, drawing, painting, play, performance or any other obscene material wherein the minor is engaged in or portrayed, depicted or represented as engaging in any act of sexual intercourse, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual activity, or in any lewd exhibition of the uncovered genitals or pubic area or areola of the breasts in the context of masturbation or other sexual activity, shall be guilty of a felony, and upon conviction, shall be imprisoned in a state correctional facility for a period of not less than five (5) nor more than twenty (20) years. The fine for a violation of this section shall not be more than Twenty-five Thousand Dollars ($25,000.00). Persons convicted under this section shall not be eligible for probation, a suspended sentence or a deferred sentence. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1021.4, is amended to read as follows:

Section 1021.4 Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his professional capacity or employment, any film, photograph, video tape, negative, or slide, depicting a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in Section 1024.1 of this title shall immediately or as soon as possible report by telephone such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case and

shall prepare and send a written report of the incident with a copy of the film, photograph, video tape, negative, or slide attached, within thirty-six (36) hours after receiving the information concerning the incident. For the purposes of this section, commercial film and photographic print processor shall mean any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person but shall not include a person who develops film or makes prints for a public agency. Any person who violates the provisions of this section, upon conviction, shall be guilty of a ~~misdemeanor and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail not to exceed one (1) year~~ felony punishable by a fine of not more than Five Thousand Dollars ($5,000.00) or imprisonment in a state correctional facility for a period of not less than one (1) year nor more than ten (10) years, or both such fine and imprisonment.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 2-401, as last amended by Section 529, Chapter 133, O.S.L. 1997 (63 O.S. Supp. 1998, Section 2-401), is amended to read as follows:

Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person:

1. To distribute, dispense, transport with intent to distribute or dispense, or solicit the use of or use the services of a person less than eighteen (18) years of age to cultivate, distribute or dispense a controlled dangerous substance or possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance;

2. To create, distribute, transport with intent to distribute or dispense, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

3. To distribute any imitation controlled substance as defined by Section 2-101 of this title, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a felony. The fine for a violation of this paragraph shall be not more than One Hundred Thousand Dollars ($100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections, with or without postimprisonment supervision, shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a felony. The fine for a violation of this paragraph shall be not more than Twenty Thousand Dollars ($20,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections, with or without postimprisonment supervision, shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a felony. The fine for a violation of this paragraph shall be not more than One Thousand Dollars ($1,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment;

4. An imitation controlled substance as defined by Section 2-101 of this title, upon conviction, shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment in the county jail for a period of not more than one (1) year and a fine of not more than One Thousand Dollars ($1,000.00). A person convicted of a second violation of the provisions of this paragraph shall be guilty of a felony. The fine for a second violation of this paragraph shall be not more than Five Thousand Dollars ($5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or

5. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a felony. The fine shall not be more than Twenty-five Thousand Dollars ($25,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. A second or subsequent conviction for the violation of the provisions of this paragraph is a felony. The fine for a second or subsequent violation of this paragraph shall be not more than One Hundred Thousand Dollars ($100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

C. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraphs 4 and 5 of subsection B of this section, shall be subject to twice the fine otherwise authorized, which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Convictions for second or subsequent violations of the provisions of this section shall not be subject to statutory

provisions for suspended sentences, deferred sentences, or probation.

D. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a felony. The fine for a violation of this paragraph shall be not less than Fifty Thousand Dollars ($50,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

Any sentence to the custody of the Department of Corrections, with or without postimprisonment supervision, shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-506 of this title.

E. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute, manufacture, dispense, transport with intent to distribute or dispense or cultivate a controlled dangerous substance, or by distributing a controlled dangerous substance to a person under eighteen (18) years of age shall be punished by life without parole or death. If the State of Oklahoma elects to seek the death penalty pursuant to this subsection, the state shall be

required to comply with all statutes regarding the imposition of the death penalty for the crime of first degree murder.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 701.12, is amended to read as follows:

Section 701.12 Aggravating circumstances shall be:

1. The defendant was previously convicted of a felony involving the use or threat of violence to the person;

2. The defendant knowingly created a great risk of death to more than one person;

3. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;

4. The murder was especially heinous, atrocious, or cruel;

5. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

6. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony;

7. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; ~~or~~

8. The victim of the murder was a peace officer as defined by Section 99 of ~~Title 21 of the Oklahoma Statutes~~ this title, or guard of an institution under the control of the Department of Corrections, and such person was killed while in performance of official duty; or

9. The defendant committed a violation of subsection E of Section 2-401 of Title 63 of the Oklahoma Statutes.

SECTION 9. This act shall become effective November 1, 1999.

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