

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1118

By: Piatt

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Sections 886, as last amended by Section 167, Chapter 5, 1st Extraordinary Session, O.S.L. 1999, 888, as last amended by Section 1, Chapter 175, O.S.L. 2000, 1111, as last amended by Section 2, Chapter 309, O.S.L. 1999, 1112, 1113, 1114 and 1123, as last amended by Section 1, Chapter 334, O.S.L. 2000 (21 O.S. Supp. 2000, Sections 886, 888, 1111 and 1123), which relate to sodomy, rape and lewd or indecent proposals to a minor; raising age references for commission or enhancement of punishment for sex-related crimes; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 886, as last amended by Section 167, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 886), is amended to read as follows:

Section 886. Any person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, shall be guilty of a felony punishable by imprisonment in the State 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)~~ eighteen (18) 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)~~ eighteen (18) 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 fails or refuses to fix punishment then the same shall be pronounced by the court.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 888, as last amended by Section 1, Chapter 175, O.S.L. 2000 (21 O.S. Supp. 2000, 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 State 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)~~ eighteen (18) 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)~~ eighteen (18) 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 fails or refuses to fix punishment then the same shall be pronounced by the court.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person ~~over~~ eighteen (18) years of age or older upon a person under ~~sixteen (16)~~ eighteen (18) 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; or

4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1111, as last amended by Section 2, Chapter 309, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1111), is amended to read as follows:

Section 1111. A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under ~~sixteen (16)~~ eighteen (18) years of age; ~~or~~

2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent; ~~or~~

3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person; ~~or~~

4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; ~~or~~

5. Where the victim is at the time unconscious of the nature of the act and this is known to the accused; ~~or~~

6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the

accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape; or

7. Where the victim is under the legal custody or supervision of a state agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, county, municipal or political subdivision employee or an employee of a contractor of the state, a county, a municipality or a political subdivision that exercises authority over the victim.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1112, is amended to read as follows:

Section 1112. No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone ~~over~~ under the age of ~~fourteen (14)~~ eighteen (18) years, with his or her consent, unless such person was ~~over~~ the age of eighteen (18) years or older at the time of such act.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1113, is amended to read as follows:

Section 1113. The essential guilt of rape or rape by instrumentation, except with the consent of a male or female ~~over~~ ~~fourteen (14)~~ eighteen (18) years of age or older, consists in the outrage to the person and feelings of the victim. Any sexual penetration, however slight, is sufficient to complete the crime.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1114, is amended to read as follows:

Section 1114. A. Rape in the first degree shall include:

1. Rape committed by a person ~~over~~ eighteen (18) years of age or older upon a person under ~~fourteen (14)~~ eighteen (18) years of age; ~~or~~

2. Rape 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. Rape 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 person committing the crime; ~~or~~

4. Rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or

5. Rape by instrumentation committed upon a person under ~~fourteen (14)~~ eighteen (18) years of age.

B. In all other cases, rape or rape by instrumentation is rape in the second degree.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1123, as last amended by Section 1, Chapter 334, O.S.L. 2000 (21 O.S. Supp. 2000, Section 1123), is amended to read as follows:

Section 1123. A. Any person who shall knowingly and intentionally:

1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under ~~sixteen (16)~~ eighteen (18) years of age for the child to have unlawful sexual relations or sexual intercourse with any person; ~~or~~

2. Look upon, touch, maul, or feel the body or private parts of any child under ~~sixteen (16)~~ eighteen (18) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; ~~or~~

3. Ask, invite, entice, or persuade any child under ~~sixteen (16)~~ eighteen (18) years of age to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; ~~or~~

4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under ~~sixteen (16)~~ eighteen (18) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under ~~sixteen (16)~~ eighteen (18) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person, upon conviction, shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not less than one (1) year nor more than twenty (20) years. The provisions of this ~~section~~ subsection shall not apply unless the accused is at least ~~three (3)~~ five (5) years older than the victim. Any person convicted of a second or subsequent violation of subsection A of this section shall be guilty of a felony and shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of subsection A of this section shall be guilty of a felony and 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 fails or refuses to fix punishment then the same shall be pronounced by the court.

B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person ~~sixteen (16)~~ eighteen (18) years of age or older, in a lewd and lascivious manner and without the consent of that person or when committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person

who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state.

C. Any person convicted of any violation of this subsection shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not more than five (5) years.

SECTION 8. This act shall become effective November 1, 2001.

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