

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 716

By: Nichols

AS INTRODUCED

An Act relating to crimes and punishments; amending 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), which relates to definition of rape; adding new definition of rape; making sexual intercourse between a student under certain age and certain school employee rape in the second degree; amending 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), which relates to lewd acts with a child; modifying language; modifying reference; creating the crime of lewd acts by a school employee with a student; prohibiting certain contact and communications; providing penalty; prohibiting consent as defense; exempting certain application of law for sentencing; amending 57 O.S. 1991, Section 582, as last amended by Section 1, Chapter 336, O.S.L. 1999 (57 O.S. Supp. 2000, Section 582), which relates to persons required to register pursuant to the Sex Offenders Registration Act; requiring registration for certain offense; providing for codification; and providing an effective date.

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

SECTION 1. 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) 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 fact 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; or

8. Where the victim is at least sixteen (16) years of age and is less than eighteen (18) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with an employee of the public or private elementary or secondary school, junior high or high school, or public vocational school 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 2. 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) 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) 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) 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) 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) 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~~. The violator shall be punished by imprisonment in the State Penitentiary for a term of not less than one (1) year nor more than twenty (20) years. The provisions of this section shall not apply unless the accused is at least three (3) 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) 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 B of this section shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term of not more than five (5) years.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1123.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any person who is an employee of a public or private elementary or secondary school, junior high or high school, or public vocational school who shall knowingly and intentionally:

1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under eighteen (18) years of age who is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school where the person is employed, for the child to have unlawful sexual relations or sexual intercourse with any person;

2. Look upon, touch, maul, or feel the body or private parts of any child under eighteen (18) years of age who is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school where the person is employed, in any lewd or lascivious manner by any acts against public decency and morality as defined by law;

3. Ask, invite, entice, or persuade any child under eighteen (18) years of age who is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school where the person is employed, 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;

4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under eighteen years of age who is a student, or under the legal custody or supervision of any elementary or secondary school, junior high or high school or

public vocational school where the person is employed, in any indecent manner, or in any manner relating to sexual matters or sexual interests; or

5. In any lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under eighteen (18) years of age who is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school or public vocational school where the person is an employed, or ejaculate upon or in the presence of a child, or force or require the 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 the child to touch or feel the body or private parts of such child or another person, upon conviction, shall be deemed guilty of a felony. The violator shall be punished by imprisonment in the State Penitentiary for a term of not more than twenty (20) years.

B. Consent shall not be a defense to a violation of this section.

C. The provisions of Section 13.1 of Title 21 of the Oklahoma Statutes shall not apply to any violation of this section.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 582, as last amended by Section 1, Chapter 336, O.S.L. 1999 (57 O.S. Supp. 2000, Section 582), is amended to read as follows:

Section 582. A. The provisions of the Sex Offenders Registration Act, ~~Section 581 et seq. of this title,~~ shall apply to any person residing, working or attending school within the State of Oklahoma who, after November 1, 1989, has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term for a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual

abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 741, 843.1, if the offense included sexual abuse or sexual exploitation, 865 et seq., 885, 886, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1040.51, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes, or Section 3 of this act.

B. The provisions of the Sex Offenders Registration Act shall apply to any person who after November 1, 1989, resides, works or attends school within the State of Oklahoma and who has been convicted or received a suspended sentence in any court of another state, a federal court, an Indian tribal court or a military court for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws listed in subsection A of this section.

C. The provisions of the Sex Offenders Registration Act shall apply to any person who resides, works or attends school within the State of Oklahoma and who has received a deferred judgment in any court of another state, a federal court, an Indian tribal court or a military court for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 741, 843.1, if the offense involved sexual abuse or sexual exploitation, 865 et seq., 885, 886, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1040.51, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes, or Section 3 of this act. The provisions of the Sex Offenders Registration Act shall not apply to any such person while the person is incarcerated in a maximum or medium correctional institution of the Department of Corrections.

SECTION 5. This act shall become effective November 1, 2001.

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