

An Act relating to crimes and punishments; amending Section 3, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, Section 51.1a), which relates to punishments for subsequent offenses for certain crimes; modifying punishment; amending 21 O.S. 2001, Section 888, as amended by Section 4, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, Section 888), which relates to forcible sodomy; clarifying punishment for subsequent offenses; amending 21 O.S. 2001, Section 1115, as amended by Section 5, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, Section 1115), which relates to rape in the first degree; modifying punishment; clarifying punishment for subsequent offenses; amending 21 O.S. 2001, Section 1123, as last amended by Section 1, Chapter 159, O.S.L. 2003 (21 O.S. Supp. 2003, Section 1123), which relates to lewd or indecent proposals or acts with a child; clarifying punishment for subsequent offenses; repealing 21 O.S. 2001, Sections 888 and 1115, as amended by Sections 9 and 10, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2003, Sections 888 and 1115), and 21 O.S. 2001, Section 1123, as amended by Section 6, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, Section 1123), which are duplicate sections relating to forcible sodomy, rape in the first degree and lewd or indecent proposals or acts with a child; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 3, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, Section 51.1a), is amended to read as follows:

Section 51.1a Any person convicted of rape in the first degree, forcible sodomy, lewd molestation or sexual abuse of a child after having been convicted of either rape in the first degree, forcible sodomy, lewd molestation or sexual abuse of a child or any attempt to commit one of these offenses shall be sentenced to life imprisonment without parole.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 888, as amended by Section 4, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, 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, except as provided in Section ~~3~~ 51.1a of this ~~act~~ title. 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.

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; 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. 2001, Section 1115, as amended by Section 5, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by death or imprisonment in the State Penitentiary, for a term of not less than five (5) years, except as provided in Section ~~3~~ 51.1a of this act title, ~~in the discretion of the jury, or in case the jury fails or refuses to fix the punishment then the same shall be pronounced by the court~~ life except as provided in Section 51.1a of this title, or life without parole. Any person convicted of a subsequent violation of subsection A of Section 1114 of this title shall not be eligible for any form of probation.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 1123, as last amended by Section 1, Chapter 159, O.S.L. 2003 (21 O.S. Supp. 2003, Section 1123), is amended to read as follows:

Section 1123. A. It is a felony for any person to 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, or other individual the person believes to be a 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, or other individual the person believes to be a 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:

- a. urinate or defecate upon a child under sixteen (16) years of age,
- b. ejaculate upon or in the presence of a child,
- c. cause, expose, force or require a child to look upon the body or private parts of another person,
- d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,
- e. cause, expose, force or require a child to look upon sexual acts performed in the presence of the child, or
- f. force or require a child to touch or feel the body or private parts of said child or another person.

Any person convicted of any violation of subsection A of this section 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 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 punishable as provided in ~~this subsection~~ Section 51.1a of this title 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 punishable 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. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this title, sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of convictions pursuant to these sections shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole.~~

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 not more than five (5) years.

D. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

SECTION 5. REPEALER 21 O.S. 2001, Sections 888 and 1115, as amended by Sections 9 and 10, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2003, Sections 888 and 1115), and 21 O.S. 2001, Section 1123, as amended by Section 6, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2003, Section 1123), are hereby repealed.

SECTION 6. 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 act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 3rd day of March, 2004.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2004.

Presiding Officer of the Senate