

ENGROSSED HOUSE
BILL NO. 1878

By: Morgan (Fred), Balkman and
Wesselhoft of the House

and

Coffee of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, Section 888), which relates to forcible sodomy; expanding scope of crime; amending 21 O.S. 2001, Section 1040.8, as amended by Section 1, Chapter 107, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1040.8), which relates to publication, distribution, or preparation of obscene material or child pornography; modifying language; prohibiting exhibition of certain materials within motor vehicle if visible outside the motor vehicle; defining terms; providing penalty; amending 21 O.S. 2001, Section 1111, as amended by Section 9, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1111), which relates to the crime of rape; modifying age limitation; 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. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, 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) 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 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, a violation of Section 1123 of this title or 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 said offenses, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole.

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; or

5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen

(18) years of age or older and is employed by the same school system.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1040.8, as amended by Section 1, Chapter 107, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1040.8), is amended to read as follows:

Section 1040.8 No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in Section 1024.1 of this title. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time ~~such~~ the material is deposited in any post office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors pursuant to Section 1040.75 of this title shall be mailed to any person. The party mailing the materials specified in this section may be indicted and tried in any county wherein ~~such~~ the material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person who violates any provision of this section shall, upon conviction, ~~shall~~ be guilty of a misdemeanor ~~and shall be punished~~ punishable by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.55 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No material which is harmful to minors shall be exhibited on a television, monitor, or other viewing screen or surface, located within or on a motor vehicle, in any manner visible to any person outside the vehicle. As used in this subsection, "material" and "harmful to minors" shall have the same meaning as provided for in Section 1040.75 of Title 21 of the Oklahoma Statutes.

B. No person shall exhibit on a television, monitor, or other viewing screen or surface, located within or on a motor vehicle, in any manner visible to any person outside the vehicle any motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or

2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernibly turgid state, even if completely and opaquely covered.

C. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not more than Five Hundred Dollars (\$500.00).

SECTION 4. AMENDATORY 21 O.S. 2001, Section 1111, as amended by Section 9, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2004, 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;
2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;
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;
5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;
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;
7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, 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)~~ twenty (20) 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 a person who is eighteen (18) years of age or older and is an employee of the same school system.

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 5. This act shall become effective November 1, 2005.

Passed the House of Representatives the 9th day of March, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate