

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 2036

By: Shurden of the Senate

and

Smithson of the House

FLOOR SUBSTITUTE

[criminal procedure - defining terms -
asexualization or chemical castration - codification
- effective date -

emergency]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Asexualization" or "asexualized" means the surgical removal of the male testicles by a licensed physician;
2. "Aggravating circumstances" are:
 - a. rape was committed against a child less than fourteen (14) years of age or sodomy was committed against a child less than sixteen (16) years of age,
 - b. the sex crime was especially serious, atrocious, or cruel,
 - c. the sex crime resulted in significant physical injury to the victim,
 - d. the sex crime was committed upon one victim by the defendant two or more times,

- e. the sex crime was committed upon one victim by two or more persons, acting in concert with the defendant,
- f. the sex crime was committed by a person while serving a sentence for a sex crime conviction, or while subject to any provision of a deferred prosecution agreement, deferred judgment, suspended sentence, or parole for a sex crime,
- g. the existence of a prior juvenile delinquency adjudication for a sex crime, and
- h. the existence of a prior conviction for a sex crime in this state or another state;

3. "Chemical castration" or "chemically castrated" means the administration of pharmaceutical substances or hormones prescribed by a licensed physician to a person for the purpose of removing sexual desire and aggression;

4. "Sex crime" means rape in the first or second degree, as defined by Section 1114 of Title 21 of the Oklahoma Statutes and punishable pursuant to Sections 1115 and 1116 of Title 21 of the Oklahoma Statutes, or forcible sodomy, punishable by Section 888 of Title 21 of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other penalty allowed by law, on and after the effective date of this act, any person who commits a sex crime as defined by paragraph 4 of Section 1 of this act, shall be subject to the provisions of this act and may be asexualized or chemically castrated in addition to any other penalty imposed by the court. Any person having been convicted of a sex crime as defined in paragraph 4 of Section 1 of this act prior to the effective date of this act may voluntarily consent to be asexualized or chemically castrated as provided in Section 6 of this act. The Pardon and

Parole Board may recommend asexualization or chemical castration as a condition of release to parole for inmates convicted of a sex crime defined in paragraph 4 of Section 1 of this act, if the inmate is not asexualized at the time of parole consideration; provided, however, no inmate shall be asexualized or chemically castrated without court order or voluntary consent. The court may order asexualization or chemical castration as a condition of a deferred judgment or suspended sentence for a sex crime defined in paragraph 4 of Section 1 of this act only when the defendant voluntarily consents to asexualization or chemical castration and the deferred or suspended sentence is not prohibited by law. Nothing in this act shall require the court to order asexualization or chemical castration for conviction of a sex offense.

B. Upon conviction and before final sentencing of a defendant for a sex crime as defined in paragraph 4 of Section 1 of this act, the court shall conduct a hearing to determine whether or not the defendant should be ordered asexualized or chemically castrated in addition to any punishment allowable for the offense. The hearing shall be conducted by the trial judge as soon as practicable without any additional presentence investigation, or the hearing may be conducted before the trial jury, if the offense was presented to a jury for a determination of guilt, and the jury will make the sentencing recommendations. If the trial jury has been waived by the defendant and the state, or if the jury will not make the sentencing recommendations, or if the defendant pleaded guilty or nolo contendere, the hearing shall be conducted before the judge.

C. In the hearing, evidence may be presented as to any aggravating or mitigating circumstances. Aggravating circumstances set forth in paragraph 2 of Section 1 of this act must be proved beyond a reasonable doubt. If the district attorney fails or declines to present any evidence of aggravating circumstances at the hearing, the judge shall dismiss the hearing for asexualization or

chemical castration and proceed to final sentencing. Only evidence of aggravation presented by the State at trial or made known to the defendant prior to the hearing shall be admissible. The State and the defendant, or counsel for the defendant, shall be permitted to present their arguments for or against asexualization or chemical castration.

D. An order for asexualization or chemical castration shall be automatically reviewed by the Court of Criminal Appeals as provided in Section 4 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When the judge or jury, if the case was presented to a jury for a determination of guilt and the sentencing recommendation, finds at least two aggravating circumstances as set forth in paragraph 2 of Section 1 of this act, then the judge may order the defendant asexualized or chemically castrated as authorized by this act. Asexualization or chemical castration shall not be ordered when the aggravating circumstances are outweighed by the findings of one or more mitigating circumstances. Additionally, before asexualization or chemical castration may be ordered there must have been a deoxyribonucleic acid (DNA) test submitted as evidence for the purpose of determining guilt with a positive identification made against the defendant by means of such test, unless the defendant voluntarily waives this requirement.

B. Chemical castration treatment shall be administered for a continuous term to coincide with sex offender registration. The term for chemical castration shall be determined by the judge, or the jury if the jury will make the sentencing recommendation, and shall be for any term up to life. Chemical castration treatment shall not be administered during any term of incarceration but shall be initiated within ninety (90) days prior to parole or release from

incarceration. The court shall inform the jury of chemical castration procedures and the range of the term allowed by law.

C. At the conclusion of the hearing pursuant to the authority of Section 2 of this act, the trial judge shall:

1. If the hearing was conducted before the trial jury and the jury will make the sentencing recommendations, give the jury written instructions on aggravating circumstances as warranted by the evidence and a detailed description of asexualization and chemical castration procedures. The jury, by unanimous vote, shall determine whether any statutory aggravating circumstances were found to exist beyond a reasonable doubt. If any aggravating circumstances were found to exist beyond a reasonable doubt, the jury shall designate in writing, signed by the foreman of the jury, the aggravating circumstances and whether the aggravating circumstances were outweighed by any mitigating circumstances as determined by the jury. The jury shall designate in writing whether the defendant is to be asexualized, chemically castrated, or sentenced without asexualization or chemical castration, and if chemical castration is recommended, the term of such treatment; or

2. Enumerate for the record whether aggravating circumstances were found to exist beyond a reasonable doubt and whether the aggravating circumstances were outweighed by any mitigating circumstances as determined by the judge, and whether the defendant is to be asexualized, chemically castrated, or sentenced without asexualization or chemical castration, and if chemical castration is ordered, the term of such treatment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Whenever asexualization or chemical castration is imposed as authorized by this act, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the

Court of Criminal Appeals. The clerk of the trial court, within ten (10) days after receiving the transcript of the hearing provided by this act, shall transmit the entire record with the transcript of the hearing to the Court of Criminal Appeals, together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant, the name and address of the attorney of record, a narrative statement of the judgment, the offense, and the punishment imposed, including asexualization or chemical castration and any other provisions. The report shall be in the form of a standard questionnaire prepared and supplied by the Court of Criminal Appeals.

B. The Court of Criminal Appeals shall consider the asexualization or chemical castration order as well as any errors in the hearing required by this act without the necessity of the defendant or counsel for the defendant enumerating any errors from the trial proceeding or making a direct appeal.

C. With regard to the review of the sentence for asexualization or chemical castration, the Court of Criminal Appeals shall determine:

1. Whether the defendant was eligible for the punishment of asexualization or chemical castration as provided in this act;

2. Whether the sentence of asexualization or chemical castration was imposed under the influence of prejudice or other arbitrary factor;

3. Whether the evidence supports the findings of two or more aggravating circumstances as enumerated in paragraph 2 of Section 1 of this act;

4. Whether the evidence supports the findings that the mitigating circumstances did not outweigh the findings of the aggravating circumstances;

5. Whether the jury, if presented to a jury for sentencing was properly instructed on aggravating circumstances with a description of the asexualization and chemical castration procedures; and

6. Whether the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

D. Both the defendant and the state shall have the right to submit briefs within the time provided by the court and to present oral argument to the court.

E. The Court of Criminal Appeals shall include in its decision a reference to the factors taken into consideration. In addition to the court's authority to review enumerated errors in the trial proceeding pursuant to direct appeal, the Court of Criminal Appeals, with regard to the review of any asexualization or chemical castration order, is authorized to:

1. Affirm the sentence of asexualization or chemical castration;

2. Set the sentence of asexualization or chemical castration aside and remand the case for modification of the sentence; or

3. Set the sentence of asexualization aside and remand the case for modification of the sentence to chemical castration.

F. The review of an asexualization or chemical castration order by the Court of Criminal Appeals shall be in addition to direct appeal, if taken. If a direct appeal is made, the review of an asexualization or chemical castration order shall be consolidated with the direct appeal for consideration. When a review of an asexualization or chemical castration order has been consolidated with a direct appeal, the Court of Criminal Appeals shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the provisions of the sentence.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.4 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When a defendant is ordered chemically castrated as provided in this act in addition to a term of incarceration, the Department of Corrections shall not administer chemical castration treatment during the entire term of incarceration, and shall begin chemical castration treatment ninety (90) days or less, as determined by the physician, prior to parole release or release from prison. The Department shall bear the cost of chemical castration treatment during incarceration, and the person shall be responsible for all costs as a condition pursuant to the Sex Offenders Registration Act as of the date of release from confinement, including release to parole or to a suspended sentence.

B. If a defendant is ordered asexualized as provided by the provisions of this act in addition to a term of imprisonment, the Department of Corrections shall secure the services of a licensed physician for the asexualization procedure. The asexualization procedure shall be completed prior to release of the person from confinement, including any release to parole or to a suspended sentence. The Department of Corrections shall bear all costs of the surgeon and surgical facilities for persons receiving asexualization while incarcerated. The Department shall not be responsible for costs for any asexualization procedure authorized by Section 6 of this act.

C. An asexualization procedure may be scheduled to be performed not less than thirty (30) days following the date of the appeal decision provided in Section 4 of this act or any time thereafter, but before release from custody.

D. The Department of Corrections shall have no obligation to comply with any court-ordered asexualization or chemical castration procedure on any defendant when the court has also imposed the death

penalty or a sentence of life imprisonment or life without parole, unless the sentence is subsequently modified and the defendant is released from the death penalty or life without parole sentence, or the defendant is otherwise to be released from incarceration or is paroled. In such cases where there is modification to the terms of the sentence or release from incarceration, asexualization or chemical castration shall be performed only when that court-ordered asexualization or chemical castration provision remains in full force and effect and was upheld by the Court of Criminal Appeals on review.

E. Any licensed physician selected to perform an asexualization procedure shall be responsible for examination of the person, scheduling suitable surgical facilities where the surgery will be performed, and for surgically removing the male testicles of the person as required by court order or voluntary consent.

F. The Department of Corrections shall be immune from liability for any asexualization or chemical castration authorized pursuant to this act, including but not limited to scheduling the procedure, facilities, and selecting the licensed physician to perform the asexualization procedure or chemical castration treatment.

G. Any licensed physician who performs an asexualization procedure or chemical castration treatment pursuant to the authority of this act shall not be liable for any act or omission relating to the procedure, unless the act or omission constitutes negligence.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.5 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. On the effective date of this act, any person incarcerated in the Department of Corrections for a sex crime as defined in paragraph 4 of Section 1 of this act, who desires to be asexualized or chemically castrated may voluntarily request the asexualization procedure or chemical castration treatment from the Department. The

Department shall not be required to file a petition for a court order on behalf of any inmate voluntarily requesting asexualization or chemical castration; provided, however, the Department shall perform the procedure or treatment only if:

1. The inmate is a male, twenty-one (21) years of age or older;
2. The inmate voluntarily requests the procedure in writing;
3. The inmate has voluntarily signed a statement admitting the offense for which he was convicted and a deoxyribonucleic acid (DNA) sample has been submitted as evidence of guilt, or the defendant has signed a waiver of the DNA testing, and the offense for which the inmate is incarcerated is a sex crime defined in paragraph 4 of Section 1 of this act;

4. A psychiatrist and a psychologist who are appointed by the Department and have experience in the treatment of sex offenders have evaluated the inmate and have determined that the inmate is a suitable candidate for the procedure or treatment, the inmate is free from coercion in the decision to have the asexualization procedure or chemical castration treatment, and the inmate has received counseling prior to undergoing the asexualization procedure;

5. The inmate has not previously requested the procedure or treatment and subsequently withdrawn the request; and

6. The physician performing the asexualization procedure or chemical castration treatment has obtained the informed written consent of the inmate to undergo the procedure or treatment.

B. An inmate voluntarily requesting asexualization or chemical castration may withdraw the request any time before the physician performs the procedure or before treatment begins. Any inmate who withdraws a request for asexualization or chemical castration is ineligible to have the procedure or treatment performed by the Department at any other time.

C. Any inmate voluntarily requesting asexualization may select a physician to perform the surgical procedure; provided, the inmate must pay all the costs relating to the procedure, including but not limited to the costs of the evaluations by the psychiatrist and psychologist, the surgical procedure, suitable surgical facilities, any medications and aftercare, and the surgeon.

D. Any licensed physician who performs an asexualization procedure authorized pursuant to this section shall not be liable for an act or omission relating to the procedure, unless the act or omission constitutes negligence.

E. The Department of Corrections shall be immune from liability for any voluntary asexualization, including but not limited to selecting the psychiatrist and psychologist to conduct the presurgical evaluation, the scheduling of any asexualization procedure, selection or assistance in scheduling any surgical facilities, and for recommendations or selecting any licensed physician to perform the asexualization procedure.

F. When a defendant voluntarily consents to asexualization or chemical castration as a condition of a deferred or suspended sentence or as a condition of parole, the defendant shall bear all costs relating thereto. The same criteria provided in paragraphs 1 through 6 of subsection A of this section shall apply before any voluntary asexualization or chemical castration may be considered by the court or the Pardon and Parole Board. The court and the Pardon and Parole Board may allow voluntary asexualization or chemical castration at their discretion. The Department of Corrections shall be immune from all liability for voluntary asexualization or chemical castration relating to any deferred or suspended sentence or any parole recommendation or consideration.

G. Any person voluntarily asexualized or chemically castrated pursuant to the authority of this section may receive a favorable consideration for parole upon meeting parole eligibility following

the surgical procedure or chemical treatment; provided, however, the voluntary asexualization or chemical castration of any person shall not guarantee any parole eligibility, recommendation or granting of parole or any release from confinement.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 997.6 of Title 22, unless there is created a duplication in numbering, reads as follows:

It is unlawful for any person to give, sell, offer or otherwise make available any prescription drug or hormone or any herb or other substance containing any mixture, compound, remedy or substance designed to counteract, reverse, diminish or otherwise interfere with any court-ordered asexualization or chemical castration treatment. Any violation of any provision of this section shall be punishable by a term of imprisonment in the Department of Corrections for not more than two (2) years, a fine not exceeding Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 582.1 of Title 57, unless there is created a duplication in numbering, reads as follows:

Any person voluntarily consenting to chemical castration or court-ordered to receive chemical castration pursuant to this act shall be required to continue chemical castration treatment as a condition of registration pursuant to the Sex Offenders Registration Act, unless otherwise directed by the court. The Department of Corrections is authorized to verify and determine compliance with chemical castration treatment by testing the blood or saliva of the person or by utilizing any other means deemed appropriate by the Department to determine compliance. Such verification and testing shall be allowed at random and scheduled intervals at the discretion of the Department. Upon registering as a castrated sex offender, the person shall be required to release all medical records for

purposes of verification of chemical castration treatment during the term of the court order and registration. The Department shall determine the ability of the person to pay for testing or verification and may require payment, in whole or part, as an additional condition of chemical castration and sex offender registration. Failure to continue voluntary or court-ordered chemical castration after registration is a crime punishable by imprisonment in the Department of Corrections for a term of not more than five (5) years, a fine not exceeding Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 9. This act shall become effective July 1, 2006.

SECTION 10. 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.

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