THE STATE SENATE
Tuesday, March 1, 2005

Senate Bill No. 807

As Amended

SENATE BILL NO. 807 - By: COFFEE of the Senate and MORGAN (Fred) of the House.

[crimes and punishments - forcible sodomy - adding age ranges - defining term - emergency]

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 <u>or where the victim of the second offense is a person under eighteen (18) years of age and the person convicted is twenty-five (25) years of age or older at the time of the commission of the offense</u>, 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

(Bold face denotes Committee Amendments)

the third or subsequent offense is a person under sixteen (16) years of age <u>or where the victim of the third or subsequent offense is a person under eighteen (18) years of age and the person convicted is twenty-five (25) years of age of older at the time of the commission of the offense</u>, 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;

5. Sodomy committed by a person who is an employee or agent of any public, parochial, or private elementary or secondary school, or junior high or high school, private or public vocational school, upon a person, who is a student or a person under the supervision of the same school system and who is not legally married to the employee; or

6. Sodomy committed by a person twenty-five (25) years of age or older upon a person under eighteen (18) years of age.

SECTION 2. 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-one (21) 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; or

9. Where the victim is under eighteen (18) years of age and the perpetrator is twenty-five (25) years of age or older.

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.

C. For purposes of the crime of rape, "supervision" means the time a student is present on school grounds as required by law or allowed by school policy, as well as any authorized school trips or activities as approved by the school or the school's governing board.

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
6 PASS, As Amended and Coauthored.