

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2703

By: Johnson

AS INTRODUCED

An Act relating to sex offenses; amending 10 O.S. 2001, Section 7115, as amended by Section 7, Chapter 455, O.S.L. 2002 (10 O.S. Supp. 2005, Section 7115), which relates to child abuse, neglect, sexual abuse and sexual exploitation; modifying penalties; amending 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Section 888), which relates to forcible sodomy; modifying penalties; amending 21 O.S. 2001, Sections 1021, as last amended by Section 1, Chapter 308, O.S.L. 2003, 1021.2, 1021.3 and 1040.13a, as amended by Section 1, Chapter 110, O.S.L. 2002 (21 O.S. Supp. 2005, Sections 1021 and 1040.13a), which relate to Oklahoma law on obscenity and child pornography; modifying penalties; amending 21 O.S. 2001, Sections 1087 and 1088, which relates to pandering; modifying penalties; amending 21 O.S. 2001, Section 1123, as last amended by Section 1, Chapter 159, O.S.L. 2003 (21 O.S. Supp. 2005, Section 1123), which relates to lewd or indecent proposals or acts as to a child under 16; modifying penalties; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7115, as amended by Section 7, Chapter 455, O.S.L. 2002 (10 O.S. Supp. 2005, Section 7115), is amended to read as follows:

Section 7115. A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00),

or both such fine and imprisonment. As used in this subsection, "child abuse" means the willful or malicious abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

B. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child abuse" means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

C. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "child neglect" means the willful or malicious neglect, as defined by paragraph 3 of

subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

D. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

E. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, ~~except as provided in Section 3 of this act.~~ Any person convicted of a second or subsequent violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for a term of life without parole. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection B of

Section 7102 of this title, of a child under eighteen (18) years of age by another.

F. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under the age of eighteen (18) by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

G. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. Any person convicted of a second or subsequent violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for a term of not less than five (5) years and not exceeding life. As used in this subsection, "child sexual exploitation" means the willful or malicious sexual exploitation, as defined by paragraph 7

of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

H. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual exploitation" means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, 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~~ custody of the Department of Corrections for a ~~period~~ term 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~~ punished by imprisonment in the custody of the Department of Corrections 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~~ custody of the Department of Corrections 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.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 1021, as last amended by Section 1, Chapter 308, O.S.L. 2003 (21 O.S. Supp. 2005, Section 1021), is amended to read as follows:

Section 1021. A. Every person who willfully and knowingly either:

1. Lewdly exposes his or her person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;

2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any obscene material or child pornography; or

4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or child pornography,

shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than Five Hundred Dollars (\$500.00) nor more than Twenty Thousand Dollars (\$20,000.00), or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or by both such fine and imprisonment.

B. Every person who:

1. Willfully solicits or aids a minor child to perform; or

2. Shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty, upon

conviction, of a felony and shall be punished by imprisonment in ~~a state correctional institution~~ the custody of the Department of Corrections for a term of not less than ten (10) years nor more than thirty (30) years. Any person convicted of a second or subsequent violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for a term of not less than twenty (20) years nor more than life.

C. Persons convicted under this section shall not be eligible for a deferred sentence.

D. For purposes of this section, "downloading on a computer" means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 1021.2, is amended to read as follows:

Section 1021.2 Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for a term of not more than twenty (20) years, or by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$25,000.00), or by both ~~said~~ such fine and imprisonment. Any person convicted of a second or subsequent violation of this section shall be punished by imprisonment in the custody of the Department of Corrections for a term of not less than twenty (20) years nor more than life. Persons convicted under this section shall not be eligible for a deferred sentence. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 1021.3, is amended to read as follows:

Section 1021.3 Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a felony and, upon conviction, shall be ~~imprisoned~~ punished by imprisonment in the State Penitentiary custody of the Department of Corrections for a ~~period~~ term of not more than twenty (20) years, or a fine of not more than Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent violation of this section shall be punished by imprisonment in the custody of the Department of Corrections for a term of not less than twenty (20) years nor more than life. Persons convicted under this section shall not be eligible for a deferred sentence. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 1040.13a, as amended by Section 1, Chapter 110, O.S.L. 2002 (21 O.S. Supp. 2005, Section 1040.13a), is amended to read as follows:

Section 1040.13a A. A person is guilty of violating the provisions of this section if, for the purposes of facilitating, encouraging, offering or soliciting sexual conduct with any minor, or other individual the person believes to be a minor, the person knowingly transmits by means of computer, or prints, publishes or reproduces by other computerized means, or buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any name, telephone number, place of residence, physical characteristics or other descriptive or identifying information of a minor or other individual the person believes to be a minor. 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.

B. Any violation of the provisions of this section shall be a misdemeanor, punishable by the imposition of a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment. Any person convicted of a second or subsequent violation of this section shall be guilty of a felony, punishable by the imposition of a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not less than one (1) year, or by both such fine and imprisonment.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 1087, is amended to read as follows:

Section 1087. A. No person shall:

1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;

2. Receive or to offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or

3. Direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation~~+~~.

B. ~~1.~~ Any person violating the provisions of subsection A of this section shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of not less than one (1) year nor more than ten (10) years. Any person convicted of a second or subsequent violation of the provisions of subsection A of this section shall be punished by imprisonment in the custody of the Department of Corrections for a term of not less than ten (10) years.

~~2.~~ C. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under ~~his~~ the control of the person or of which ~~he~~ the person has possession shall, upon conviction for the first offense, be guilty of a misdemeanor ~~and~~ punishable by imprisonment in the county jail for a ~~period~~ term of not less than six (6) months nor more than one (1) year, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00). Upon conviction for a subsequent offense pursuant to this subsection ~~such, the person shall be guilty of a felony and shall be punished punishable by imprisonment in the State Penitentiary custody of the Department of Corrections for a period term of not less than one (1) year nor more than ten (10) years, or by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00),~~ or by both such fine and imprisonment.

SECTION 8. AMENDATORY 21 O.S. 2001, Section 1088, is amended to read as follows:

Section 1088. A. No person shall:

1. By promise, threats, violence, or by any device or scheme, including but not limited to the use of any controlled dangerous substance prohibited pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, cause, induce, persuade, or encourage a child under eighteen (18) years of age to engage or

continue to engage in prostitution or to become or remain an inmate of a house of prostitution or other place where prostitution is practiced;

2. Keep, hold, detain, restrain, or compel against his or her will, any child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or other place where prostitution is practiced or allowed; or

3. Directly or indirectly keep, hold, detain, restrain, or compel or attempt to keep, hold, detain, restrain, or compel a child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or any place where prostitution is practiced or allowed for the purpose of compelling such child to directly or indirectly pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred by such child.

B. ~~1.~~ Any person violating the provisions of subsection A of this section other than paragraph 2 of this subsection, upon conviction, shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of not less than one (1) year nor more than twenty-five (25) years, and by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00). Any person convicted of a second or subsequent violation of the provisions of subsection A of this section shall be punished by imprisonment in the custody of the Department of Corrections for a term of not less than twenty-five (25) years, and by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00).

~~2.~~ C. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits a violation of this section in any house, building, room, tent, lot or premises under ~~his~~ the control of the person or of which ~~he~~ the person has possession, upon

conviction for the first offense, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a ~~period~~ term of not less than six (6) months nor more than one (1) year, and by a fine of not more than Five Thousand Dollars (\$5,000.00). Upon conviction for a subsequent offense pursuant to the provisions of this subsection ~~such~~, the person shall be guilty of a felony, punishable by imprisonment in the custody of the Department of Corrections for a ~~period~~ term of not less than one (1) year nor more than ten (10) years, and by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00).

SECTION 9. AMENDATORY 21 O.S. 2001, Section 1123, as last amended by Section 1, Chapter 159, O.S.L. 2003 (21 O.S. Supp. 2005, 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 this subsection ~~A of this section~~ shall be punished by imprisonment in the State Penitentiary custody of the Department of Corrections 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 this subsection ~~A of this section~~ shall be guilty of a felony punishable ~~as provided in this subsection~~ and shall not be eligible for probation, suspended or ~~deferred sentence~~ by imprisonment in the custody of the Department of Corrections for a term of not less than twenty (20) years. Any

person convicted of a third or subsequent violation of this subsection ~~A of this section~~ shall be guilty of a felony punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections 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~~ custody of the Department of Corrections 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~~ custody of the Department of Corrections for a term of 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 10. This act shall become effective November 1, 2006.

50-2-8803          GRS          01/10/06