

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1816

By: Dank

6
7 COMMITTEE SUBSTITUTE

8 (crimes and punishments - separate penalties for
9 certain crimes -

10 effective date)

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12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7115, as
15 last amended by Section 1, Chapter 326, O.S.L. 2006 (10 O.S. Supp.
16 2006, Section 7115), is amended to read as follows:

17 Section 7115. A. Any parent or other person who shall
18 willfully or maliciously engage in child abuse shall, upon
19 conviction, be guilty of a felony punishable by imprisonment in the
20 custody of the Department of Corrections not exceeding life
21 imprisonment, or by imprisonment in a county jail not exceeding one
22 (1) year, or by a fine of not less than Five Hundred Dollars
23 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
24 such fine and imprisonment. As used in this subsection, "child

1 abuse" means the willful or malicious abuse, as defined by paragraph
2 1 of subsection B of Section 7102 of this title, of a child under
3 eighteen (18) years of age by another, or the act of willfully or
4 maliciously injuring, torturing or maiming a child under eighteen
5 (18) years of age by another.

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

21 C. Any parent or other person who shall willfully or
22 maliciously engage in child neglect shall, upon conviction, be
23 punished by imprisonment in the custody of the Department of
24 Corrections not exceeding life imprisonment, or by imprisonment in a

1 county jail not exceeding one (1) year, or by a fine of not less
2 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
3 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
4 this subsection, "child neglect" means the willful or malicious
5 neglect, as defined by paragraph 3 of subsection B of Section 7102
6 of this title, of a child under eighteen (18) years of age by
7 another.

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

24

1 E. Any parent or other person who shall willfully or
2 maliciously engage in child sexual abuse shall, upon conviction, be
3 punished by imprisonment in the custody of the Department of
4 Corrections not exceeding life imprisonment, or by imprisonment in a
5 county jail not exceeding one (1) year, or by a fine of not less
6 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
7 Dollars (\$5,000.00), or both such fine and imprisonment, except as
8 provided in Section 51.1a of Title 21 of the Oklahoma Statutes. As
9 used in this section, "child sexual abuse" means the willful or
10 malicious sexual abuse, as defined by paragraph 6 of subsection B of
11 Section 7102 of this title, of a child under eighteen (18) years of
12 age by another.

13 F. Any parent or other person who shall willfully or
14 maliciously engage in sexual abuse with a child under twelve (12)
15 years of age shall, upon conviction, be punished by imprisonment in
16 the custody of the Department of Corrections for not less than
17 twenty-five (25) years nor more than life imprisonment, and by a
18 fine of not less than Five Hundred Dollars (\$500.00) nor more than
19 Five Thousand Dollars (\$5,000.00).

20 G. Any parent or other person who shall willfully or
21 maliciously engage in enabling child sexual abuse shall, upon
22 conviction, be punished by imprisonment in the custody of the
23 Department of Corrections not exceeding life imprisonment, or by
24 imprisonment in a county jail not exceeding one (1) year, or by a

1 fine of not less than Five Hundred Dollars (\$500.00) nor more than
2 Five Thousand Dollars (\$5,000.00), or both such fine and
3 imprisonment. As used in this subsection, "enabling child sexual
4 abuse" means the causing, procuring or permitting of a willful or
5 malicious act of child sexual abuse, as defined by paragraph 6 of
6 subsection B of Section 7102 of this title, of a child under the age
7 of eighteen (18) by another. As used in this subsection, "permit"
8 means to authorize or allow for the care of a child by an individual
9 when the person authorizing or allowing such care knows or
10 reasonably should know that the child will be placed at risk of
11 sexual abuse as proscribed by this subsection.

12 ~~G.~~ H. Any parent or other person who shall willfully or
13 maliciously engage in child sexual exploitation shall, upon
14 conviction, be punished by imprisonment in the custody of the
15 Department of Corrections not exceeding life imprisonment, or by
16 imprisonment in a county jail not exceeding one (1) year, or by a
17 fine of not less than Five Hundred Dollars (\$500.00) nor more than
18 Five Thousand Dollars (\$5,000.00), or both such fine and
19 imprisonment. As used in this subsection, "child sexual
20 exploitation" means the willful or malicious sexual exploitation, as
21 defined by paragraph 7 of subsection B of Section 7102 of this
22 title, of a child under eighteen (18) years of age by another.

23 ~~H.~~ I. Any parent or other person who shall willfully or
24 maliciously engage in sexual exploitation of a child under twelve

1 (12) years of age shall, upon conviction, be punished by
2 imprisonment in the custody of the Department of Corrections for not
3 less than twenty-five (25) years nor more than life imprisonment,
4 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
5 more than Five Thousand Dollars (\$5,000.00).

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

22 ~~F.~~ K. Notwithstanding any other provision of law, any parent or
23 other person convicted of forcible anal or oral sodomy, rape, rape
24 by instrumentation, or lewd molestation of a child under fourteen

1 (14) years of age subsequent to a previous conviction for any
2 offense of forcible anal or oral sodomy, rape, rape by
3 instrumentation, or lewd molestation of a child under fourteen (14)
4 years of age shall be punished by death or by imprisonment for life
5 without parole.

6 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1021, as
7 last amended by Section 1, Chapter 308, O.S.L. 2003 (21 O.S. Supp.
8 2006, Section 1021), is amended to read as follows:

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

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

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

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

23 4. Makes, prepares, cuts, sells, gives, loans, distributes,
24 keeps for sale, or exhibits any disc record, metal, plastic, or wax,

1 wire or tape recording, or any type of obscene material or child
2 pornography,
3 shall be guilty, upon conviction, of a felony and shall be punished
4 by the imposition of a fine of not less than Five Hundred Dollars
5 (\$500.00) nor more than Twenty Thousand Dollars (\$20,000.00) or by
6 imprisonment for not less than thirty (30) days nor more than ten
7 (10) years, or by both such fine and imprisonment.

8 B. Every person who:

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

10 2. Shows, exhibits, loans, or distributes to a minor child any

11 obscene material or child pornography for the purpose of inducing

12 said minor to participate in, any act specified in paragraphs 1, 2,

13 3 or 4 of subsection A of this section shall be guilty, upon

14 conviction, of a felony and shall be punished by imprisonment in a

15 ~~state correctional institution~~ the custody of the Department of

16 Corrections for not less than ten (10) years nor more than thirty

17 (30) years. If the minor child is under twelve (12) years of age at

18 the time the offense is committed, the person shall, upon

19 conviction, be punished by imprisonment in the custody of the

20 Department of Corrections for not less than twenty-five (25) years.

21 C. Persons convicted under this section shall not be eligible

22 for a deferred sentence.

23 D. For purposes of this section, "downloading on a computer"

24 means electronically transferring an electronic file from one

1 computer or electronic media to another computer or electronic
2 media.

3 SECTION 3. AMENDATORY 21 O.S. 2001, Section 1123, as
4 last amended by Section 2, Chapter 284, O.S.L. 2006 (21 O.S. Supp.
5 2006, Section 1123), is amended to read as follows:

6 Section 1123. A. It is a felony for any person to knowingly
7 and intentionally:

8 1. Make any oral, written or electronically or computer-
9 generated lewd or indecent proposal to any child under sixteen (16)
10 years of age, or other individual the person believes to be a child
11 under sixteen (16) years of age, for the child to have unlawful
12 sexual relations or sexual intercourse with any person; or

13 2. Look upon, touch, maul, or feel the body or private parts of
14 any child under sixteen (16) years of age in any lewd or lascivious
15 manner by any acts against public decency and morality, as defined
16 by law; or

17 3. Ask, invite, entice, or persuade any child under sixteen
18 (16) years of age, or other individual the person believes to be a
19 child under sixteen (16) years of age, to go alone with any person
20 to a secluded, remote, or secret place, with the unlawful and
21 willful intent and purpose then and there to commit any crime
22 against public decency and morality, as defined by law, with the
23 child; or

24

1 4. In any manner lewdly or lasciviously look upon, touch, maul,
2 or feel the body or private parts of any child under sixteen (16)
3 years of age in any indecent manner or in any manner relating to
4 sexual matters or sexual interest; or

5 5. In a lewd and lascivious manner and for the purpose of
6 sexual gratification:

7 a. urinate or defecate upon a child under sixteen (16)
8 years of age,

9 b. ejaculate upon or in the presence of a child,

10 c. cause, expose, force or require a child to look upon
11 the body or private parts of another person,

12 d. force or require any child under sixteen (16) years of
13 age or other individual the person believes to be a
14 child under sixteen (16) years of age, to view any
15 obscene materials, child pornography or materials
16 deemed harmful to minors as such terms are defined by
17 Sections 1024.1 and 1040.75 of this title,

18 e. cause, expose, force or require a child to look upon
19 sexual acts performed in the presence of the child, or

20 f. force or require a child to touch or feel the body or
21 private parts of said child or another person.

22 Any person convicted of any violation of this subsection shall
23 be punished by imprisonment in the custody of the Department of
24 Corrections for not less than three (3) years nor more than twenty

1 (20) years. If the child is under twelve (12) years of age at the
2 time the offense is committed, the person shall, upon conviction, be
3 punished by imprisonment in the custody of the Department of
4 Corrections for not less than twenty-five (25) years. The
5 provisions of this subsection shall not apply unless the accused is
6 at least three (3) years older than the victim. Any person
7 convicted of a second or subsequent violation of this subsection
8 shall be guilty of a felony punishable as provided in this
9 subsection and shall not be eligible for probation, suspended or
10 deferred sentence. Any person convicted of a third or subsequent
11 violation of this subsection shall be guilty of a felony punishable
12 by imprisonment in the custody of the Department of Corrections for
13 a term of life or life without parole, in the discretion of the
14 jury, or in case the jury fails or refuses to fix punishment then
15 the same shall be pronounced by the court. Any person convicted of
16 a violation of this subsection after having been twice convicted of
17 a violation of subsection A of Section 1114 of this title, Section
18 888 of this title, sexual abuse of a child pursuant to Section 7115
19 of Title 10 of the Oklahoma Statutes, or of any attempt to commit
20 any of these offenses or any combination of convictions pursuant to
21 these sections shall be punished by imprisonment in the custody of
22 the Department of Corrections for a term of life or life without
23 parole.

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1 B. No person shall commit sexual battery on any other person.
2 "Sexual battery" shall mean the intentional touching, mauling or
3 feeling of the body or private parts of any person sixteen (16)
4 years of age or older, in a lewd and lascivious manner and without
5 the consent of that person or when committed by a state, county,
6 municipal or political subdivision employee or a contractor or an
7 employee of a contractor of the state, a county, a municipality or
8 political subdivision of this state upon a person who is under the
9 legal custody, supervision or authority of a state agency, a county,
10 a municipality or a political subdivision of this state.

11 C. Any person convicted of a violation of subsection B of this
12 section shall be deemed guilty of a felony and shall be punished by
13 imprisonment in the custody of the Department of Corrections for not
14 more than ten (10) years.

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

19 SECTION 4. This act shall become effective November 1, 2007.
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