

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 1992

By: Nichols of the Senate

and

Terrill, Reynolds and Tibbs  
of the House

6  
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9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to crimes and punishments; amending  
11 21 O.S. 2001, Section 891, as amended by Section 10,  
12 Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2007, Section  
13 891), which relates to child stealing; modifying  
14 language; creating crime of aggravated child  
15 pornography; setting penalty; construing separate  
16 materials; defining terms; amending 21 O.S. 2001,  
17 Section 1114, which relates to rape; adding  
18 circumstances for rape in the first degree; amending  
19 21 O.S. 2001, Section 1738, as amended by Section 13,  
20 Chapter 460, O.S.L. 2002, (21 O.S. Supp. 2007,  
21 Section 1738), which relates to seizure of property;  
22 adding additional property used to commit certain  
23 offenses; defining term; creating Jenny's Law;  
24 providing short title; prohibiting desecration of a  
human corpse for certain purposes; enumerating  
prohibited purposes; stating penalty; authorizing  
prosecution in addition to other laws; defining term;  
providing for codification; providing for  
noncodification; providing an effective date; and  
declaring an emergency.

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

1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 891, as  
2 amended by Section 10, Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2007,  
3 Section 891), is amended to read as follows:

4 Section 891. Whoever maliciously, forcibly or fraudulently  
5 takes or entices away any child under the age of sixteen (16) years,  
6 with intent to detain ~~and~~ or conceal such child from its parent,  
7 guardian or other person having the lawful charge of such child or  
8 to transport such child from the jurisdiction of this state or the  
9 United States without the consent of the person having lawful charge  
10 of such child shall, upon conviction, be guilty of a felony  
11 punishable by imprisonment in the custody of the Department of  
12 Corrections not exceeding ten (10) years.

13 Except for persons sentenced to life or life without parole, any  
14 person sentenced to imprisonment for two (2) years or more for a  
15 violation of this section and the offense involved sexual abuse or  
16 sexual exploitation, shall be required to serve a term of post-  
17 imprisonment supervision pursuant to subparagraph f of paragraph 1  
18 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes  
19 under conditions determined by the Department of Corrections. The  
20 jury shall be advised that the mandatory post-imprisonment  
21 supervision shall be in addition to the actual imprisonment.

22 SECTION 2. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1040.12a of Title 21, unless  
24 there is created a duplication in numbering, reads as follows:

1       A. Any person who, with knowledge of its contents, possesses  
2 one hundred (100) or more separate materials depicting child  
3 pornography shall be, upon conviction, guilty of aggravated  
4 possession of child pornography. The violator shall be punished by  
5 imprisonment in the custody of the Department of Corrections for a  
6 term not exceeding twenty (20) years and by a fine in an amount not  
7 more than Ten Thousand Dollars (\$10,000.00).

8       B. For purposes of this section:

9       1. Multiple copies of the same identical material shall each be  
10 counted as a separate item;

11       2. The term "material" means the same definition provided by  
12 Section 1040.75 of Title 21 of the Oklahoma Statutes and, in  
13 addition, includes all digital and computerized images and  
14 depictions; and

15       3. The term "child pornography" means the same definition  
16 provided by Section 1040.80 of Title 21 of the Oklahoma Statutes  
17 and, in addition, includes sexual conduct, sexual excitement,  
18 sadomasochistic abuse, and performance of material harmful to minors  
19 where a minor is present or depicted as such terms are defined in  
20 Section 1040.75 of Title 21 of the Oklahoma Statutes.

21       SECTION 3.       AMENDATORY       21 O.S. 2001, Section 1114, is  
22 amended to read as follows:

23       Section 1114. A. Rape in the first degree shall include:  
24

1 1. rape committed by a person over eighteen (18) years of age  
2 upon a person under fourteen (14) years of age; or

3 2. rape committed upon a person incapable through mental  
4 illness or any unsoundness of mind of giving legal consent  
5 regardless of the age of the person committing the crime; or

6 3. rape accomplished where the victim is intoxicated by a  
7 narcotic or anesthetic agent, administered by or with the privity of  
8 the accused as a means of forcing the victim to submit; or

9 4. rape accomplished where the victim is at the time  
10 unconscious of the nature of the act and this fact is known to the  
11 accused; or

12 5. rape accomplished with any person by means of force,  
13 violence, or threats of force or violence accompanied by apparent  
14 power of execution regardless of the age of the person committing  
15 the crime; or

16 ~~4.~~ 6. rape by instrumentation resulting in bodily harm is rape  
17 by instrumentation in the first degree regardless of the age of the  
18 person committing the crime; or

19 ~~5.~~ 7. rape by instrumentation committed upon a person under  
20 fourteen (14) years of age.

21 B. In all other cases, rape or rape by instrumentation is rape  
22 in the second degree.

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24

1 SECTION 4. AMENDATORY 21 O.S. 2001, Section 1738 as  
2 amended by Section 13, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2007,  
3 Section 1738), is amended to read as follows:

4 Section 1738. A. Any commissioned peace officer of this state  
5 is authorized to seize any vehicle owned by or registered to the  
6 defendant used in the commission of any armed robbery offense  
7 defined in Section 801 of this title, or any vehicle owned by or  
8 registered to the defendant when such vehicle is used to facilitate  
9 the intentional discharge of any kind of firearm in violation of  
10 Section 652 of this title, or any vehicle, airplane, vessel,  
11 vehicles or parts of vehicles whose numbers have been removed,  
12 altered or obliterated so as to prevent determination of the true  
13 identity or ownership of said property and parts of vehicles which  
14 probable cause indicates are stolen but whose true ownership cannot  
15 be determined, or any vehicle owned by or registered to the  
16 defendant used in violation of the Trademark Anti-Counterfeiting  
17 Act, or any equipment owned by or registered to the defendant which  
18 is used in the attempt or commission of any act of burglary in the  
19 first or second degree, motor vehicle theft, unauthorized use of a  
20 vehicle, obliteration of distinguishing numbers on vehicles or  
21 criminal possession of vehicles with altered, removed or obliterated  
22 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of  
23 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma  
24 Statutes, or any equipment owned by or registered to the defendant

1 used in violation of the Trademark Anti-Counterfeiting Act, or any  
2 vehicle, airplane, vessel or equipment owned by or registered to the  
3 defendant used in the commission of any arson offense defined in  
4 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property  
5 may be held as evidence until a forfeiture has been declared or a  
6 release ordered. Forfeiture actions under this section may be  
7 brought by the district attorney in the proper county of venue as  
8 petitioner; provided, in the event the district attorney elects not  
9 to file such action, or fails to file such action within ninety (90)  
10 days of the date of the seizure of such equipment, the property  
11 shall be returned to the owner.

12 B. In addition to the property described in subsection A of  
13 this section, the following property is also subject to forfeiture  
14 pursuant to this section:

15 1. Property used in the commission of theft of livestock or in  
16 any manner to facilitate the theft of livestock;

17 2. The proceeds gained from the commission of theft of  
18 livestock;

19 3. Personal property acquired with proceeds gained from the  
20 commission of theft of livestock;

21 4. All conveyances, including aircraft, vehicles or vessels,  
22 and horses or dogs which are used to transport or in any manner to  
23 facilitate the transportation for the purpose of the commission of  
24 theft of livestock;

1 5. Any items having a counterfeit mark and all property that is  
2 owned by or registered to the defendant that is employed or used in  
3 connection with any violation of the Trademark Anti-Counterfeiting  
4 Act;

5 6. Any weapon possessed, used or available for use in any  
6 manner during the commission of a felony within the State of  
7 Oklahoma, or any firearm that is possessed by a convicted felon;

8 7. Any police scanner used in violation of Section 1214 of this  
9 title; ~~and~~

10 8. Any computer and its components and peripherals, including  
11 but not limited to the central processing unit, monitor, keyboard,  
12 printers, scanners, software, and hardware, when it is used in the  
13 commission of any crime in this state;

14 9. All property used in the commission of, or in any manner to  
15 facilitate, a violation of Section 2 of this act; and

16 10. All conveyances, including aircraft, vehicles or vessels,  
17 monies, coins and currency, or other instrumentality used or  
18 intended to be used, in any manner or part, to commit a violation of  
19 paragraph 1 of subsection A of Section 1021 of this title, where the  
20 victim of the crime is a minor child, subsection B of Section 1021  
21 of this title, Section 1021.2 of this title, paragraph 1 of  
22 subsection A of Section 1111 of this title, or paragraphs 2 and 3 of  
23 subsection A of Section 1123 of this title.

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1 C. Notice of seizure and intended forfeiture proceeding shall  
2 be filed in the office of the clerk of the district court for the  
3 county wherein such property is seized and shall be given all owners  
4 and parties in interest.

5 D. Notice shall be given according to one of the following  
6 methods:

7 1. Upon each owner or party in interest whose right, title, or  
8 interest is of record in the Oklahoma Tax Commission or with the  
9 county clerk for filings under the Uniform Commercial Code, served  
10 in the manner of service of process in civil cases prescribed by  
11 Section 2004 of Title 12 of the Oklahoma Statutes;

12 2. Upon each owner or party in interest whose name and address  
13 is known, served in the manner of service of process in civil cases  
14 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

15 3. Upon all other owners, whose addresses are unknown, but who  
16 are believed to have an interest in the property by one publication  
17 in a newspaper of general circulation in the county where the  
18 seizure was made.

19 E. Within sixty (60) days after the mailing or publication of  
20 the notice, the owner of the property and any other party in  
21 interest or claimant may file a verified answer and claim to the  
22 property described in the notice of seizure and of the intended  
23 forfeiture proceeding.

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1 F. If at the end of sixty (60) days after the notice has been  
2 mailed or published there is no verified answer on file, the court  
3 shall hear evidence upon the fact of the unlawful use and may order  
4 the property forfeited to the state, if such fact is proven.

5 G. If a verified answer is filed, the forfeiture proceeding  
6 shall be set for hearing.

7 H. At the hearing the petitioner shall prove by clear and  
8 convincing evidence that property was used in the attempt or  
9 commission of an act specified in subsection A of this section or is  
10 property described in subsection B of this section with knowledge by  
11 the owner of the property.

12 I. The claimant of any right, title, or interest in the  
13 property may prove the lien, mortgage, or conditional sales contract  
14 to be bona fide and that the right, title, or interest created by  
15 the document was created without any knowledge or reason to believe  
16 that the property was being, or was to be, used for the purpose  
17 charged.

18 J. In the event of such proof, the court may order the property  
19 released to the bona fide or innocent owner, lien holder, mortgagee,  
20 or vendor if the amount due such person is equal to, or in excess  
21 of, the value of the property as of the date of the seizure, it  
22 being the intention of this section to forfeit only the right,  
23 title, or interest of the purchaser, except for items bearing a  
24

1 counterfeit mark or used exclusively to manufacture a counterfeit  
2 mark.

3 K. If the amount due to such person is less than the value of  
4 the property, or if no bona fide claim is established, the property  
5 may be forfeited to the state and may be sold pursuant to judgment  
6 of the court, as on sale upon execution, and as provided in Section  
7 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise  
8 provided for by law and for property bearing a counterfeit mark  
9 which shall be destroyed.

10 L. Property taken or detained pursuant to this section shall  
11 not be repleviable, but shall be deemed to be in the custody of the  
12 petitioner or in the custody of the law enforcement agency as  
13 provided in the Trademark Anti-Counterfeiting Act. Except for  
14 property required to be destroyed pursuant to the Trademark Anti-  
15 Counterfeiting Act, the petitioner shall release said property to  
16 the owner of the property if it is determined that the owner had no  
17 knowledge of the illegal use of the property or if there is  
18 insufficient evidence to sustain the burden of showing illegal use  
19 of such property. If the owner of the property stipulates to the  
20 forfeiture and waives the hearing, the petitioner may determine if  
21 the value of the property is equal to or less than the outstanding  
22 lien. If such lien exceeds the value of the property, the property  
23 may be released to the lien holder. Property which has not been  
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1 released by the petitioner shall be subject to the orders and  
2 decrees of the court or the official having jurisdiction thereof.

3 M. The petitioner, or the law enforcement agency holding  
4 property pursuant to the Trademark Anti-Counterfeiting Act, shall  
5 not be held civilly liable for having custody of the seized property  
6 or proceeding with a forfeiture action as provided for in this  
7 section.

8 N. Attorney fees shall not be assessed against the state or the  
9 petitioner for any actions or proceeding pursuant to Section 1701 et  
10 seq. of this title.

11 O. The proceeds of the sale of any property shall be  
12 distributed as follows, in the order indicated:

13 1. To the bona fide or innocent purchaser, conditional sales  
14 vendor, or mortgagee of the property, if any, up to the amount of  
15 such person's interest in the property, when the court declaring the  
16 forfeiture orders a distribution to such person;

17 2. To the payment of the actual reasonable expenses of  
18 preserving the property;

19 3. To the victim of the crime to compensate said victim for any  
20 loss incurred as a result of the act for which such property was  
21 forfeited; and

22 4. The balance to a revolving fund in the office of the county  
23 treasurer of the county wherein the property was seized, to be  
24 distributed as follows: one-third (1/3) to the investigating law

1 enforcement agency; one-third (1/3) of said fund to be used and  
2 maintained as a revolving fund by the district attorney for the  
3 victim-witness fund, a reward fund or the evidence fund; and one-  
4 third (1/3) to go to the jail maintenance fund, with a yearly  
5 accounting to the board of county commissioners in whose county the  
6 fund is established. If the petitioner is not the district  
7 attorney, then the one-third (1/3) which would have been designated  
8 to that office shall be distributed to the petitioner. Monies  
9 distributed to the jail maintenance fund shall be used to pay costs  
10 for the storage of such property if such property is ordered  
11 released to a bona fide or innocent owner, lien holder, mortgagee,  
12 or vendor and if such funds are available in said fund.

13 P. Monies distributed into the revolving fund in the office of  
14 the county treasurer from forfeitures initiated under this section  
15 by the district attorney shall be limited to One Hundred Thousand  
16 Dollars (\$100,000.00) at any one time in counties with population in  
17 excess of three hundred thousand (300,000) and Twenty-five Thousand  
18 Dollars (\$25,000.00) at any one time in counties with population  
19 less than three hundred thousand (300,000). Any amount in excess of  
20 these figures shall be placed in the general fund of the county.

21 Q. If the court finds that the property was not used in the  
22 attempt or commission of an act specified in subsection A of this  
23 section and was not property subject to forfeiture pursuant to  
24 subsection B of this section and is not property bearing a

1 counterfeit mark, the court shall order the property released to the  
2 owner as the right, title, or interest appears on record in the Tax  
3 Commission as of the seizure.

4 R. No vehicle, airplane, or vessel used by a person as a common  
5 carrier in the transaction of business as a common carrier shall be  
6 forfeited pursuant to the provisions of this section unless it shall  
7 be proven that the owner or other person in charge of such  
8 conveyance was a consenting party or privy to the attempt or  
9 commission of an act specified in subsection A or B of this section.  
10 No property shall be forfeited pursuant to the provisions of this  
11 section by reason of any act or omission established by the owner  
12 thereof to have been committed or omitted without the knowledge or  
13 consent of such owner, and by any person other than such owner while  
14 such property was unlawfully in the possession of a person other  
15 than the owner in violation of the criminal laws of the United  
16 States or of any state.

17 S. Whenever any property is forfeited pursuant to this section,  
18 the district court having jurisdiction of the proceeding may order  
19 that the forfeited property may be retained for its official use by  
20 the state, county, or municipal law enforcement agency which seized  
21 the property.

22 SECTION 5. NEW LAW A new section of law not to be  
23 codified in the Oklahoma Statutes reads as follows:

24

1 Section 6 of this act shall be known and may be cited as  
2 "Jenny's Law".

3 SECTION 6. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1161.1 of Title 21, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. It is unlawful for any person to knowingly and willfully  
7 desecrate a human corpse for any purpose of:

8 1. Tampering with the evidence of a crime;

9 2. Camouflaging the death of human being;

10 3. Disposing of a dead body;

11 4. Impeding or prohibiting the detection, investigation or  
12 prosecution of a crime;

13 5. Altering, inhibiting or concealing the identification of a  
14 dead body, a crime victim, or a criminal offender; or

15 6. Disrupting, prohibiting or interfering with any law  
16 enforcement agency or the Office of the State Medical Examiner in  
17 detecting, investigating, examining, determining, identifying or  
18 processing a dead body, cause of death, the scene where a dead body  
19 is found, or any forensic examination or investigation relating to a  
20 dead body or a crime.

21 B. Upon conviction, the violator of any provision of this  
22 section shall be guilty of a felony punishable by imprisonment in  
23 the custody of the Department of Corrections for a term not more  
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1 than seven (7) years, by a fine not exceeding Eight Thousand Dollars  
2 (\$8,000.00), or by both such fine and imprisonment.

3 C. This offense may be prosecuted in addition to any  
4 prosecution pursuant to Section 1161 of Title 21 of the Oklahoma  
5 Statutes for removal of a dead body or any other criminal offense.

6 D. For purposes of this section, "desecration of a human  
7 corpse" means any act committed after the death of a human being  
8 including, but not limited to, dismemberment, disfigurement,  
9 mutilation, burning, or any act committed to cause the dead body to  
10 be devoured, scattered or dissipated; except, those procedures  
11 performed by a state agency or licensed authority in due course of  
12 its duties and responsibilities for forensic examination, gathering  
13 or removing crime scene evidence, presentation or preservation of  
14 evidence, dead body identification, cause of death, autopsy,  
15 cremation or burial, organ donation, use of a cadaver for medical  
16 educational purposes, or other necessary procedures to identify,  
17 remove or dispose of a dead body by the proper authority.

18 SECTION 7. This act shall become effective July 1, 2008.

19 SECTION 8. It being immediately necessary for the preservation  
20 of the public peace, health and safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

23  
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