

ENROLLED HOUSE
BILL NO. 1816

By: Dank, Smithson, Armes, Coody, Inman,
Jackson, Kern, Martin (Steve),
Proctor, Reynolds, Sears, Sullivan,
Terrill, Thompson, Tibbs, Winchester,
Johnson (Dennis), McCullough, Faught,
Enns and McDaniel (Randy) of the House

and

Lamb, Leftwich, Williamson, Coffee,
Gumm, Jolley, Nichols, Brown, Justice,
Crain, Bingman, Reynolds, Sykes,
Coates, Mazzei and Wilcoxson of the
Senate

An Act relating to crimes and punishments; amending
10 O.S. 2001, Section 7115, as last amended by
Section 1, Chapter 326, O.S.L. 2006 (10 O.S. Supp.
2006, Section 7115), which relates to child abuse;
providing separate penalties for certain crimes;
amending 21 O.S. 2001, Section 1021, as last amended
by Section 1, Chapter 308, O.S.L. 2003 (21 O.S. Supp.
2006, Section 1021), which relates to indecent
exposure; providing separate penalty; amending 21
O.S. 2001, Section 1123, as last amended by Section
2, Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2006,
Section 1123), which relates to lewd acts to a child;
providing separate penalty; 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
last amended by Section 1, Chapter 326, O.S.L. 2006 (10 O.S. Supp.
2006, 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 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 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 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 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 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 51.1a of Title 21 of the Oklahoma Statutes or as otherwise provided in subsection F of this section for a child victim under twelve (12) years of age. 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 sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

G. 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 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- H. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the 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 subsection I of this section for a child victim under twelve (12) years of age. 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- I. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

J. 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 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.

~~I~~ K. Notwithstanding any other provision of law, any parent or other person convicted of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction for any offense of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age shall be punished by death or by imprisonment for life without parole.

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

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

1. Lewdly exposes his 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, upon conviction, and shall be punished by imprisonment in ~~a state correctional institution~~ the custody of the Department of Corrections for not less than ten (10) years nor more than thirty (30) years, except when the minor child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.

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 3. AMENDATORY 21 O.S. 2001, Section 1123, as last amended by Section 2, Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2006, 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 shall be punished by imprisonment in the custody of the Department of Corrections for not less than three (3) years nor more than twenty (20) years, except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years. The provisions of this subsection 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 shall be guilty of a felony punishable as provided in this subsection and shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this subsection shall be guilty of a felony punishable 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, 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 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 a violation of subsection B of this section shall be deemed guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) 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 4. This act shall become effective November 1, 2007.

Passed the House of Representatives the 16th day of May, 2007.

Presiding Officer of the House of
Representatives

Passed the Senate the 17th day of May, 2007.

Presiding Officer of the Senate