

THE HOUSE OF REPRESENTATIVES  
Monday, March 5, 2007

Committee Substitute for  
House Bill No. 1816

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1816 - By: DANK AND SMITHSON of the House and LAMB of the Senate.

( crimes and punishments - separate penalties for certain crimes – effective date )

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

1 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7115, as last amended by  
2 Section 1, Chapter 326, O.S.L. 2006 (10 O.S. Supp. 2006, Section 7115), is amended to  
3 read as follows:  
4 Section 7115. A. Any parent or other person who shall willfully or maliciously  
5 engage in child abuse shall, upon conviction, be guilty of a felony punishable by  
6 imprisonment in the custody of the Department of Corrections not exceeding life  
7 imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine  
8 of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars  
9 (\$5,000.00), or both such fine and imprisonment. As used in this subsection, “child  
10 abuse” means the willful or malicious abuse, as defined by paragraph 1 of subsection B of  
11 Section 7102 of this title, of a child under eighteen (18) years of age by another, or the act

1 of willfully or maliciously injuring, torturing or maiming a child under eighteen (18)  
2 years of age by another.

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

15 C. Any parent or other person who shall willfully or maliciously engage in child  
16 neglect shall, upon conviction, be punished by imprisonment in the custody of the  
17 Department of Corrections not exceeding life imprisonment, or by imprisonment in a  
18 county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars  
19 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and  
20 imprisonment. As used in this subsection, “child neglect” means the willful or malicious  
21 neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child  
22 under eighteen (18) years of age by another.

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

13 E. Any parent or other person who shall willfully or maliciously engage in child  
14 sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the  
15 Department of Corrections not exceeding life imprisonment, or by imprisonment in a  
16 county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars  
17 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and  
18 imprisonment, except as provided in Section 51.1a of Title 21 of the Oklahoma Statutes.  
19 As used in this section, “child sexual abuse” means the willful or malicious sexual abuse,  
20 as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under  
21 eighteen (18) years of age by another.

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

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

18 ~~G.~~ H. Any parent or other person who shall willfully or maliciously engage in child  
19 sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of  
20 the Department of Corrections not exceeding life imprisonment, or by imprisonment in a  
21 county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars  
22 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and

1 imprisonment. As used in this subsection, “child sexual exploitation” means the willful  
2 or malicious sexual exploitation, as defined by paragraph 7 of subsection B of Section  
3 7102 of this title, of a child under eighteen (18) years of age by another.

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

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

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

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

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

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

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

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

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

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

5 B. Every person who:

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

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

10 conviction, of a felony and shall be punished by imprisonment in ~~a state correctional~~

11 ~~institution~~ the custody of the Department of Corrections for not less than ten (10) years

12 nor more than thirty (30) years. If the minor child is under twelve (12) years of age at

13 the time the offense is committed, the person shall, upon conviction, be punished by

14 imprisonment in the custody of the Department of Corrections for not less than twenty-

15 five (25) years.

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

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

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

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

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

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

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

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

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

- 18 a. urinate or defecate upon a child under sixteen (16) years of age,  
19 b. ejaculate upon or in the presence of a child,  
20 c. cause, expose, force or require a child to look upon the body or private  
21 parts of another person,

- 1           d.     force or require any child under sixteen (16) years of age or other  
2                     individual the person believes to be a child under sixteen (16) years of  
3                     age, to view any obscene materials, child pornography or materials  
4                     deemed harmful to minors as such terms are defined by Sections  
5                     1024.1 and 1040.75 of this title,  
6           e.     cause, expose, force or require a child to look upon sexual acts  
7                     performed in the presence of the child, or  
8           f.     force or require a child to touch or feel the body or private parts of said  
9                     child or another person.

10           Any person convicted of any violation of this subsection shall be punished by  
11 imprisonment in the custody of the Department of Corrections for not less than three (3)  
12 years nor more than twenty (20) years. If the child is under twelve (12) years of age at  
13 the time the offense is committed, the person shall, upon conviction, be punished by  
14 imprisonment in the custody of the Department of Corrections for not less than twenty-  
15 five (25) years. The provisions of this subsection shall not apply unless the accused is at  
16 least three (3) years older than the victim. Any person convicted of a second or  
17 subsequent violation of this subsection shall be guilty of a felony punishable as provided  
18 in this subsection and shall not be eligible for probation, suspended or deferred  
19 sentence. Any person convicted of a third or subsequent violation of this subsection  
20 shall be guilty of a felony punishable by imprisonment in the custody of the Department  
21 of Corrections for a term of life or life without parole, in the discretion of the jury, or in  
22 case the jury fails or refuses to fix punishment then the same shall be pronounced by the

1 court. Any person convicted of a violation of this subsection after having been twice  
2 convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this  
3 title, sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma  
4 Statutes, or of any attempt to commit any of these offenses or any combination of  
5 convictions pursuant to these sections shall be punished by imprisonment in the custody  
6 of the Department of Corrections for a term of life or life without parole.

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

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

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,  
2 dated 03-01-07 - DO PASS, As Amended and Coauthored.