

EHB 1816

1 THE STATE SENATE
2 Tuesday, April 10, 2007

3 ENGROSSED

4 House Bill No. 1816

5 As Amended

6 ENGROSSED HOUSE BILL NO. 1816 - By: DANK, SMITHSON, ARMES, COODY,
7 INMAN, JACKSON, KERN, MARTIN (Steve), PROCTOR, REYNOLDS, SEARS,
8 SULLIVAN, TERRILL, THOMPSON, TIBBS, WINCHESTER and JOHNSON (Dennis)
9 of the House and LAMB and LEFTWICH of the Senate.

10 [crimes and punishments - separate penalties for certain
11 crimes -
12 effective date]

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
25 abuse" means the willful or malicious abuse, as defined by paragraph
26 1 of subsection B of Section 7102 of this title, of a child under

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

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

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

1 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
2 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
3 this subsection, "child neglect" means the willful or malicious
4 neglect, as defined by paragraph 3 of subsection B of Section 7102
5 of this title, of a child under eighteen (18) years of age by
6 another.

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

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

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

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

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

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

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

9 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1021, as
10 last amended by Section 1, Chapter 308, O.S.L. 2003 (21 O.S. Supp.
11 2006, Section 1021), is amended to read as follows:

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

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

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

21 3. Writes, composes, stereotypes, prints, photographs, designs,
22 copies, draws, engraves, paints, molds, cuts, or otherwise prepares,
23 publishes, sells, distributes, keeps for sale, knowingly downloads

1 on a computer, or exhibits any obscene material or child
2 pornography; or
3 4. Makes, prepares, cuts, sells, gives, loans, distributes,
4 keeps for sale, or exhibits any disc record, metal, plastic, or wax,
5 wire or tape recording, or any type of obscene material or child
6 pornography,
7 shall be guilty, upon conviction, of a felony and shall be punished
8 by the imposition of a fine of not less than Five Hundred Dollars
9 (\$500.00) nor more than Twenty Thousand Dollars (\$20,000.00) or by
10 imprisonment for not less than thirty (30) days nor more than ten
11 (10) years, or by both such fine and imprisonment.

12 B. Every person who:

13 1. Willfully solicits or aids a minor child to perform; or
14 2. Shows, exhibits, loans, or distributes to a minor child any
15 obscene material or child pornography for the purpose of inducing
16 said minor to participate in, any act specified in paragraphs 1, 2,
17 3 or 4 of subsection A of this section shall be guilty, upon
18 conviction, of a felony and shall be punished by imprisonment in a
19 ~~state correctional institution~~ the custody of the Department of
20 Corrections for not less than ten (10) years nor more than thirty
21 (30) years. If the minor child is under twelve (12) years of age at
22 the time the offense is committed, the person shall, upon

1 conviction, be punished by imprisonment in the custody of the
2 Department of Corrections for not less than twenty-five (25) years.

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

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

9 SECTION 3. AMENDATORY 21 O.S. 2001, Section 1123, as
10 last amended by Section 2, Chapter 284, O.S.L. 2006 (21 O.S. Supp.
11 2006, Section 1123), is amended to read as follows:

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

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

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

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

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

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

- 14 a. urinate or defecate upon a child under sixteen (16)
15 years of age,
16 b. ejaculate upon or in the presence of a child,
17 c. cause, expose, force or require a child to look upon
18 the body or private parts of another person,
19 d. force or require any child under sixteen (16) years of
20 age or other individual the person believes to be a
21 child under sixteen (16) years of age, to view any
22 obscene materials, child pornography or materials

1 deemed harmful to minors as such terms are defined by
2 Sections 1024.1 and 1040.75 of this title,
3 e. cause, expose, force or require a child to look upon
4 sexual acts performed in the presence of the child, or
5 f. force or require a child to touch or feel the body or
6 private parts of said child or another person.

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

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

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

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

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

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

6 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JURISPRUDENCE, dated
7 4-4-07 - DO PASS, As Amended and Coauthored.