

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2049

By: Dank

4
5
6
7 AS INTRODUCED

8 An Act relating to crimes and punishments; amending
9 10 O.S. 2001, Section 7115, as last amended by
10 Section 1, Chapter 326, O.S.L. 2006 (10 O.S. Supp.
11 2006, Section 7115), which relates to child abuse;
12 providing separate penalties for certain crimes;
13 amending 21 O.S. 2001, Section 1021, as last amended
14 by Section 1, Chapter 308, O.S.L. 2003 (21 O.S. Supp.
15 2006, Section 1021), which relates to indecent
16 exposure; providing separate penalty; amending 21
17 O.S. 2001, Section 1123, as last amended by Section
18 2, Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2006,
19 Section 1123), which relates to lewd acts to a child;
20 providing separate penalty; and providing an
21 effective date.

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

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

1 Section 7115. A. Any parent or other person who shall
2 willfully or maliciously engage in child abuse shall, upon
3 conviction, be guilty of a felony punishable by imprisonment in the
4 custody of the Department of Corrections not exceeding life
5 imprisonment, or by imprisonment in a county jail not exceeding one
6 (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
8 such fine and imprisonment. As used in this subsection, "child
9 abuse" means the willful or malicious abuse, as defined by paragraph
10 1 of subsection B of Section 7102 of this title, of a child under
11 eighteen (18) years of age by another, or the act of willfully or
12 maliciously injuring, torturing or maiming a child under eighteen
13 (18) years of age by another.

14 B. Any parent or other person who shall willfully or
15 maliciously engage in enabling child abuse shall, upon conviction,
16 be punished by imprisonment in the custody of the Department of
17 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
19 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
20 Dollars (\$5,000.00) or both such fine and imprisonment. As used in
21 this subsection, "enabling child abuse" means the causing, procuring
22 or permitting of a willful or malicious act of child abuse, as
23 defined by paragraph 1 of subsection B of Section 7102 of this
24 title, of a child under eighteen (18) years of age by another. As

1 used in this subsection, "permit" means to authorize or allow for
2 the care of a child by an individual when the person authorizing or
3 allowing such care knows or reasonably should know that the child
4 will be placed at risk of abuse as proscribed by this subsection.

5 C. Any parent or other person who shall willfully or
6 maliciously engage in child neglect shall, upon conviction, be
7 punished by imprisonment in the custody of the Department of
8 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
10 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
11 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
12 this subsection, "child neglect" means the willful or malicious
13 neglect, as defined by paragraph 3 of subsection B of Section 7102
14 of this title, of a child under eighteen (18) years of age by
15 another.

16 D. Any parent or other person who shall willfully or
17 maliciously engage in enabling child neglect shall, upon conviction,
18 be punished by imprisonment in the custody of the Department of
19 Corrections not exceeding life imprisonment, or by imprisonment in a
20 county jail not exceeding one (1) year, or by a fine of not less
21 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
22 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
23 this subsection, "enabling child neglect" means the causing,
24 procuring or permitting of a willful or malicious act of child

1 neglect, as defined by paragraph 3 of subsection B of Section 7102
2 of this title, of a child under eighteen (18) years of age by
3 another. As used in this subsection, "permit" means to authorize or
4 allow for the care of a child by an individual when the person
5 authorizing or allowing such care knows or reasonably should know
6 that the child will be placed at risk of neglect as proscribed by
7 this subsection.

8 E. Any parent or other person who shall willfully or
9 maliciously engage in child sexual abuse shall, upon conviction, be
10 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, except as
15 provided in Section 51.1a of Title 21 of the Oklahoma Statutes. As
16 used in this section, "child sexual abuse" means the willful or
17 malicious sexual abuse, as defined by paragraph 6 of subsection B of
18 Section 7102 of this title, of a child under eighteen (18) years of
19 age by another.

20 F. Any parent or other person who shall willfully or
21 maliciously engage in sexual abuse with a child under twelve (12)
22 years of age shall, upon conviction, be punished by imprisonment in
23 the custody of the Department of Corrections for not less than
24 twenty-five (25) years nor more than life imprisonment, and by a

1 fine of not less than Five Hundred Dollars (\$500.00) nor more than
2 Five Thousand Dollars (\$5,000.00).

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

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

1 Five Thousand Dollars (\$5,000.00), or both such fine and
2 imprisonment. As used in this subsection, "child sexual
3 exploitation" means the willful or malicious sexual exploitation, as
4 defined by paragraph 7 of subsection B of Section 7102 of this
5 title, of a child under eighteen (18) years of age by another.

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

13 J. Any parent or other person who shall willfully or
14 maliciously engage in enabling 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, "enabling child sexual
21 exploitation" means the causing, procuring or permitting of a
22 willful or malicious act of child sexual exploitation, as defined by
23 paragraph 7 of subsection B of Section 7102 of this title, of a
24 child under eighteen (18) years of age by another. As used in this

1 subsection, "permit" means to authorize or allow for the care of a
2 child by an individual when the person authorizing or allowing such
3 care knows or reasonably should know that the child will be placed
4 at risk of sexual exploitation as proscribed by this subsection.

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

13 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1021, as
14 last amended by Section 1, Chapter 308, O.S.L. 2003 (21 O.S. Supp.
15 2006, Section 1021), is amended to read as follows:

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

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

21 2. Procures, counsels, or assists any person to expose such
22 person, or to make any other exhibition of such person to public
23 view or to the view of any number of persons, for the purpose of
24 sexual stimulation of the viewer;

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

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

10 shall be guilty, upon conviction, of a felony and shall be punished
11 by the imposition of a fine of not less than Five Hundred Dollars
12 (\$500.00) nor more than Twenty Thousand Dollars (\$20,000.00) or by
13 imprisonment for not less than thirty (30) days nor more than ten
14 (10) years, or by both such fine and imprisonment.

15 B. Every person who:

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

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

1 the time the offense is committed, the person shall, upon
2 conviction, be punished by imprisonment in the custody of the
3 Department of Corrections for not less than twenty-five (25) years.

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

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

10 SECTION 3. AMENDATORY 21 O.S. 2001, Section 1123, as
11 last amended by Section 2, Chapter 284, O.S.L. 2006 (21 O.S. Supp.
12 2006, Section 1123), is amended to read as follows:

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

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

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

24

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
23 deemed harmful to minors as such terms are defined by
24 Sections 1024.1 and 1040.75 of this title,

- 1 e. cause, expose, force or require a child to look upon
2 sexual acts performed in the presence of the child, or
3 f. force or require a child to touch or feel the body or
4 private parts of said child or another person.

5 Any person convicted of any violation of this subsection shall
6 be punished by imprisonment in the custody of the Department of
7 Corrections for not less than three (3) years nor more than twenty
8 (20) years. If the child is under twelve (12) years of age at the
9 time the offense is committed, the person shall, upon conviction, be
10 punished by imprisonment in the custody of the Department of
11 Corrections for not less than twenty-five (25) years. The
12 provisions of this subsection shall not apply unless the accused is
13 at least three (3) years older than the victim. Any person
14 convicted of a second or subsequent violation of this subsection
15 shall be guilty of a felony punishable as provided in this
16 subsection and shall not be eligible for probation, suspended or
17 deferred sentence. Any person convicted of a third or subsequent
18 violation of this subsection shall be guilty of a felony punishable
19 by imprisonment in the custody of the Department of Corrections for
20 a term of life or life without parole, in the discretion of the
21 jury, or in case the jury fails or refuses to fix punishment then
22 the same shall be pronounced by the court. Any person convicted of
23 a violation of this subsection after having been twice convicted of
24 a violation of subsection A of Section 1114 of this title, Section

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

51-1-5636 GRS 01/03/07