

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 1021

By: Paddack

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2001, Section 888, as last amended by Section
9 9, Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2008,
10 Section 888), which relates to forcible sodomy;
11 increasing age of victim; amending 21 O.S. 2001,
12 Section 1111, as last amended by Section 5, Chapter
13 62, O.S.L. 2006 (21 O.S. Supp. 2008, Section 1111),
14 which relates to rape defined; changing age defining
15 rape; amending 21 O.S. 2001, Section 1112, which
16 relates to age limitation for conviction for rape;
17 increasing age limitation; amending 21 O.S. 2001,
18 Section 1113, which relates to penetration sufficient
19 to complete crime of rape; increasing age for
20 consent; amending 21 O.S. 2001, Section 1114, as
21 amended by Section 3, Chapter 438, O.S.L. 2008 (21
22 O.S. Supp. 2008, Section 1114), which relates to rape
23 in first and second degree; increasing age of victim
24 for rape in first degree; changing parameters for
rape by instrumentation; amending 21 O.S. 2001,
Section 1123, as last amended by Section 14, Chapter
3, O.S.L. 2008 (21 O.S. Supp. 2008, Section 1123),
which relates to lewd and indecent acts with a child;
increasing age of victim in certain prohibited acts;
changing age for sexual battery; providing for
juvenile or youthful offender prosecution for certain
offense; providing an effective date; and declaring
an emergency.

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

1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 888, as last
2 amended by Section 9, Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2008,
3 Section 888), is amended to read as follows:

4 Section 888. A. Any person who forces another person to engage
5 in the detestable and abominable crime against nature, pursuant to
6 Section 886 of this title, upon conviction, is guilty of a felony
7 punishable by imprisonment in the custody of the Department of
8 Corrections for a period of not more than twenty (20) years. Except
9 for persons sentenced to life or life without parole, any person
10 sentenced to imprisonment for two (2) years or more for a violation
11 of this subsection shall be required to serve a term of post-
12 imprisonment supervision pursuant to subparagraph f of paragraph 1
13 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
14 under conditions determined by the Department of Corrections. The
15 jury shall be advised that the mandatory post-imprisonment
16 supervision shall be in addition to the actual imprisonment. Any
17 person convicted of a second violation of this section, where the
18 victim of the second offense is a person under ~~sixteen (16)~~ eighteen
19 (18) years of age, shall not be eligible for probation, suspended or
20 deferred sentence. Any person convicted of a third or subsequent
21 violation of this section, where the victim of the third or
22 subsequent offense is a person under ~~sixteen (16)~~ eighteen (18) years
23 of age, shall be punished by imprisonment in the custody of the
24 Department of Corrections for a term of life or life without parole,

1 in the discretion of the jury, or in case the jury fails or refuses
2 to fix punishment then the same shall be pronounced by the court.
3 Any person convicted of a violation of this subsection after having
4 been twice convicted of a violation of subsection A of Section 1114
5 of this title, a violation of Section 1123 of this title or sexual
6 abuse of a child pursuant to Section 7115 of Title 10 of the
7 Oklahoma Statutes, or of any attempt to commit any of these offenses
8 or any combination of said offenses, shall be punished by
9 imprisonment in the custody of the Department of Corrections for a
10 term of life or life without parole.

11 B. The crime of forcible sodomy shall include:

12 1. Sodomy committed by a person over eighteen (18) years of age
13 upon a person under ~~sixteen (16)~~ eighteen (18) years of age; ~~or~~

14 2. Sodomy committed upon a person incapable through mental
15 illness or any unsoundness of mind of giving legal consent
16 regardless of the age of the person committing the crime; ~~or~~

17 3. Sodomy accomplished with any person by means of force,
18 violence, or threats of force or violence accompanied by apparent
19 power of execution regardless of the age of the victim or the person
20 committing the crime; ~~or~~

21 4. Sodomy committed by a state, county, municipal or political
22 subdivision employee or a contractor or an employee of a contractor
23 of the state, a county, a municipality or political subdivision of
24 this state upon a person who is under the legal custody, supervision

1 or authority of a state agency, a county, a municipality or a
2 political subdivision of this state; or

3 5. Sodomy committed upon a person who is at least ~~sixteen (16)~~
4 eighteen (18) years of age but less than twenty (20) years of age
5 and is a student of any public or private secondary school, junior
6 high or high school, or public vocational school, with a person who
7 is eighteen (18) years of age or older and is employed by the same
8 school system.

9 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1111, as
10 last amended by Section 5, Chapter 62, O.S.L. 2006 (21 O.S. Supp.
11 2008, Section 1111), is amended to read as follows:

12 Section 1111. A. Rape is an act of sexual intercourse
13 involving vaginal or anal penetration accomplished with a male or
14 female who is not the spouse of the perpetrator and who may be of
15 the same or the opposite sex as the perpetrator under any of the
16 following circumstances:

17 1. Where the victim is under ~~sixteen (16)~~ eighteen (18) years
18 of age;

19 2. Where the victim is incapable through mental illness or any
20 other unsoundness of mind, whether temporary or permanent, of giving
21 legal consent;

22 3. Where force or violence is used or threatened, accompanied
23 by apparent power of execution to the victim or to another person;

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1 4. Where the victim is intoxicated by a narcotic or anesthetic
2 agent, administered by or with the privity of the accused as a means
3 of forcing the victim to submit;

4 5. Where the victim is at the time unconscious of the nature of
5 the act and this fact is known to the accused;

6 6. Where the victim submits to sexual intercourse under the
7 belief that the person committing the act is a spouse, and this
8 belief is induced by artifice, pretense, or concealment practiced by
9 the accused or by the accused in collusion with the spouse with
10 intent to induce that belief. In all cases of collusion between the
11 accused and the spouse to accomplish such act, both the spouse and
12 the accused, upon conviction, shall be deemed guilty of rape;

13 7. Where the victim is under the legal custody or supervision
14 of a state agency, a federal agency, a county, a municipality or a
15 political subdivision and engages in sexual intercourse with a
16 state, federal, county, municipal or political subdivision employee
17 or an employee of a contractor of the state, the federal government,
18 a county, a municipality or a political subdivision that exercises
19 authority over the victim; or

20 8. Where the victim is at least ~~sixteen (16)~~ eighteen (18)
21 years of age and is less than twenty (20) years of age and is a
22 student, or under the legal custody or supervision of any public or
23 private elementary or secondary school, junior high or high school,
24 or public vocational school, and engages in sexual intercourse with

1 a person who is eighteen (18) years of age or older and is an
2 employee of the same school system.

3 B. Rape is an act of sexual intercourse accomplished with a
4 male or female who is the spouse of the perpetrator if force or
5 violence is used or threatened, accompanied by apparent power of
6 execution to the victim or to another person.

7 SECTION 3. AMENDATORY 21 O.S. 2001, Section 1112, is
8 amended to read as follows:

9 Section 1112. No person can be convicted of rape or rape by
10 instrumentation on account of an act of sexual intercourse with
11 anyone over the age of ~~fourteen (14)~~ eighteen (18) years, with his
12 or her consent, ~~unless such person was over the age of eighteen (18)~~
13 ~~years at the time of such act.~~

14 SECTION 4. AMENDATORY 21 O.S. 2001, Section 1113, is
15 amended to read as follows:

16 Section 1113. The essential guilt of rape or rape by
17 instrumentation, except with the consent of a male or female ~~over~~
18 ~~fourteen (14)~~ eighteen (18) years of age or older, consists in the
19 outrage to the person and feelings of the victim. Any sexual
20 penetration, however slight, is sufficient to complete the crime.

21 SECTION 5. AMENDATORY 21 O.S. 2001, Section 1114, as
22 amended by Section 3, Chapter 438, O.S.L. 2008 (21 O.S. Supp. 2008,
23 Section 1114), is amended to read as follows:

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

1 1. rape committed by a person over eighteen (18) years of age
2 upon a person under ~~fourteen (14)~~ eighteen (18) 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 6. rape by instrumentation resulting in bodily harm is rape by
17 instrumentation in the first degree regardless of the age of the
18 person committing the crime; or

19 7. rape by instrumentation committed upon a person under
20 ~~fourteen (14)~~ eighteen (18) 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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1 SECTION 6. AMENDATORY 21 O.S. 2001, Section 1123, as
2 last amended by Section 14, Chapter 3, O.S.L. 2008 (21 O.S. Supp.
3 2008, Section 1123), is amended to read as follows:

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

6 1. Make any oral, written or electronically or computer-
7 generated lewd or indecent proposal to any child under ~~sixteen (16)~~
8 eighteen (18) years of age, or other individual the person believes
9 to be a child under ~~sixteen (16)~~ eighteen (18) years of age, for the
10 child to have unlawful sexual relations or sexual intercourse with
11 any person; ~~or~~

12 2. Look upon, touch, maul, or feel the body or private parts of
13 any child under ~~sixteen (16)~~ eighteen (18) years of age in any lewd
14 or lascivious manner by any acts against public decency and
15 morality, as defined by law; ~~or~~

16 3. Ask, invite, entice, or persuade any child under ~~sixteen~~
17 ~~(16)~~ eighteen (18) years of age, or other individual the person
18 believes to be a child under ~~sixteen (16)~~ eighteen (18) years of
19 age, to go alone with any person to a secluded, remote, or secret
20 place, with the unlawful and willful intent and purpose then and
21 there to commit any crime against public decency and morality, as
22 defined by law, with the child; ~~or~~

23 4. In any manner lewdly or lasciviously look upon, touch, maul,
24 or feel the body or private parts of any child under ~~sixteen (16)~~

1 eighteen (18) years of age in any indecent manner or in any manner
2 relating to sexual matters or sexual interest; or

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

5 a. urinate or defecate upon a child under ~~sixteen (16)~~
6 eighteen (18) years of age,

7 b. ejaculate upon or in the presence of a child,

8 c. cause, expose, force or require a child to look upon
9 the body or private parts of another person,

10 d. force or require any child under ~~sixteen (16)~~ eighteen
11 (18) years of age or other individual the person
12 believes to be a child under ~~sixteen (16)~~ eighteen
13 (18) years of age, to view any obscene materials,
14 child pornography or materials deemed harmful to
15 minors as such terms are defined by Sections 1024.1
16 and 1040.75 of this title,

17 e. cause, expose, force or require a child to look upon
18 sexual acts performed in the presence of the child, or

19 f. force or require a child to touch or feel the body or
20 private parts of said child or another person.

21 Any person convicted of any violation of this subsection shall
22 be punished by imprisonment in the custody of the Department of
23 Corrections for not less than three (3) years nor more than twenty
24 (20) years, except when the child is under twelve (12) years of age

1 at the time the offense is committed, and in such case the person
2 shall, upon conviction, be punished by imprisonment in the custody
3 of the Department of Corrections for not less than twenty-five (25)
4 years. The provisions of this subsection shall not apply unless the
5 accused is at least three (3) years older than the victim. Any
6 person convicted of a second or subsequent violation of this
7 subsection shall be guilty of a felony punishable as provided in
8 this subsection and shall not be eligible for probation, suspended
9 or deferred sentence. Any person convicted of a third or subsequent
10 violation of this subsection shall be guilty of a felony punishable
11 by imprisonment in the custody of the Department of Corrections for
12 a term of life or life without parole, in the discretion of the
13 jury, or in case the jury fails or refuses to fix punishment then
14 the same shall be pronounced by the court. Any person convicted of
15 a violation of this subsection after having been twice convicted of
16 a violation of subsection A of Section 1114 of this title, Section
17 888 of this title, sexual abuse of a child pursuant to Section 7115
18 of Title 10 of the Oklahoma Statutes, or of any attempt to commit
19 any of these offenses or any combination of convictions pursuant to
20 these sections shall be punished by imprisonment in the custody of
21 the Department of Corrections for a term of life or life without
22 parole.

23 B. No person shall commit sexual battery on any other person.
24 "Sexual battery" shall mean the intentional touching, mauling or

1 feeling of the body or private parts of any person ~~sixteen (16)~~
2 eighteen (18) years of age or older, in a lewd and lascivious manner
3 and without the consent of that person or when committed by a state,
4 county, municipal or political subdivision employee or a contractor
5 or an employee of a contractor of the state, a county, a
6 municipality or political subdivision of this state upon a person
7 who is under the legal custody, supervision or authority of a state
8 agency, a county, a municipality or a political subdivision of this
9 state.

10 C. Any person who is eighteen (18) years of age or older and is
11 convicted of a violation of subsection B of this section shall be
12 deemed guilty of a felony and shall be punished by imprisonment in
13 the custody of the Department of Corrections for not more than ten
14 (10) years. Any person who is less than eighteen (18) years of age
15 and who is deemed to have violated the provisions of subsection B of
16 this section shall be prosecuted in a juvenile proceeding unless
17 certified as an adult or youthful offender.

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

22 E. Except for persons sentenced to life or life without parole,
23 any person sentenced to imprisonment for two (2) years or more for a
24 violation of this section shall be required to serve a term of post-

1 imprisonment supervision pursuant to subparagraph f of paragraph 1
2 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
3 under conditions determined by the Department of Corrections. The
4 jury shall be advised that the mandatory post-imprisonment
5 supervision shall be in addition to the actual imprisonment.

6 SECTION 7. This act shall become effective July 1, 2009.

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

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