STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

SENATE BILL 706 By: Paddack

AS INTRODUCED

An Act relating to crimes and punishments; amending Section 3, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2008, Section 51.1a), which relates to second offense enhancements; including enhanced penalty for attempt to commit certain offense; modifying punishment; amending 21 O.S. 2001, Section 54, which relates to foreign conviction; modifying language; allowing other applicable sentence enhancements; amending 21 O.S. 2001, Section 888, as last amended by Section 9, Chapter 2361, O.S.L. 2007 (21 O.S. Supp. 2008, Section 888), which relates to forcible sodomy; deleting sentence punishment enhancements; amending 21 O.S. 2001, Section 1111.1, as amended by Section 17, Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2008, Section 1111.1), which relates to rape by instrumentation; making certain conduct between certain persons to be rape by instrumentation; amending 21 O.S. 2001, Section 1115, as last amended by Section 18, Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2008, Section 1115), which relates to punishments for rape in first degree; deleting sentence punishment enhancement; 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 proposals to child; deleting sentence punishment enhancements; amending 47 O.S. 2001, Section 11-904, as amended by Section 13, Chapter 275, O.S.L. 2004 (47 O.S. Supp. 2008, Section 11-904), which relates to personal injury accident while under influence; increasing penalty range for accident with great bodily injury; amending 57 O.S. 2001, Section 571, as last amended by Section 29, Chapter 3, O.S.L. 2008 (57 O.S. Supp. 2008, Section 571), which relates to definition of nonviolent offense; adding discharging a firearm to

exceptions of certain definition; repealing 21 O.S. 2001, Sections 888, as amended by Section 4, Chapter 455, O.S.L. 2002, 1115, as amended by Section 5, Chapter 455, O.S.L. 2002, and 1123, as amended by Section 6, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2008, Sections 888, 1115, and 1123), which relate to forcible sodomy, punishment for rape in first degree; and lewd and indecent proposals with a child, and are duplicate sections; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 3, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2008, Section 51.1a), is amended to read as follows:

Section 51.1a Any person convicted of rape in the first degree, forcible sodomy, lewd molestation or sexual abuse of a child after having been convicted of either rape in the first degree, forcible sodomy, lewd molestation or sexual abuse of a child <u>or of any attempt to commit any of these offenses</u> shall be sentenced to <u>life or</u> life without parole.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 54, is amended to read as follows:

Section 54. Every person who has been convicted in any other state, government or country of an offense which, if committed within this state, would be punishable by the laws of this state by imprisonment in the penitentiary, is punishable for any subsequent crime committed within this state, in the manner prescribed in

Section ~~434~~ 51.1, 51.1a, ~~435~~ 51.2 or ~~436~~ 51.3 of this ~~act~~ title or any other applicable sentence enhancement provision of the Oklahoma Statutes, and to the same extent as if such ~~first~~ previous conviction or convictions had taken place in a court of this state.

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

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

~~of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished 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, a violation of Section 1123 of this title or 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 said offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.~~

B. The crime of forcible sodomy shall include:

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

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

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

4. Sodomy 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; or

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

SECTION 4. AMENDATORY 21 O.S. 2001, Section 1111.1, as amended by Section 17, Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2008, Section 1111.1), is amended to read as follows:

Section 1111.1 Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met<u>; further, where the victim is at least (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or</u>

supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section, or where the victim is under the legal custody or supervision of a state, federal, county, municipal or political subdivision and engages in conduct prohibited by this section with a federal, state, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or political subdivision that exercises authority over the victim, consent shall not be an element of the crime. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 1115, as last amended by Section 18, Chapter 261, O.S.L. 2007 (21 O.S. Supp. 2008, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by death or imprisonment in the custody of the Department of Corrections, for a term of not less than five (5) years, life or

life without parole. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. ~~Any person convicted of a second or subsequent violation of subsection A of Section 1114 of this title shall not be eligible for any form of probation. Any person convicted of a third or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the custody of the Department of Corrections for life or life without parole~~.

SECTION 6. AMENDATORY 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), 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.

E. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

SECTION 7. AMENDATORY 47 O.S. 2001, Section 11-904, as amended by Section 13, Chapter 275, O.S.L. 2004 (47 O.S. Supp. 2008, Section 11-904), is amended to read as follows:

Section 11-904. A. Any person who is involved in a personal injury accident while driving or operating a motor vehicle within this state and who is in violation of the provisions of subsection A

of Section 11-902 of this title may be charged with a violation of the provisions of this subsection as follows:

1. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in the county jail for not less than ninety (90) days nor more than one (1) year, and a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00); and

2. Any person who is convicted of a violation of the provisions of this subsection after having been previously convicted of a violation of this subsection or of Section 11-902 of this title shall be deemed guilty of a felony and shall be punished by imprisonment in a state correctional institution for not less than one (1) year and not more than five (5) years, and a fine of not more than Five Thousand Dollars ($5,000.00).

B. 1. Any person who causes an accident resulting in great bodily injury to any person other than himself while driving or operating a motor vehicle within this state and who is in violation of the provisions of subsection A of Section 11-902 of this title may be charged with a violation of the provisions of this subsection. Any person who is convicted of a violation of the provisions of this subsection shall be deemed guilty of a felony punishable by imprisonment in a state correctional institution for not less than one (1) year and not more than ~~five (5)~~ ten (10)

years, and a fine of not more than Five Thousand Dollars ($5,000.00).

2. As used in this subsection, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

SECTION 8. AMENDATORY 57 O.S. 2001, Section 571, as last amended by Section 29, Chapter 3, O.S.L. 2008 (57 O.S. Supp. 2008, Section 571), is amended to read as follows:

Section 571. As used in the Oklahoma Statutes, unless another definition is specified:

1. "Capacity" means the actual available bedspace as certified by the State Board of Corrections subject to applicable federal and state laws and the rules and regulations promulgated under such laws;

2. “Nonviolent offense” means any felony offense except the following, or any attempts to commit or conspiracy or solicitation to commit the following crimes:

a. assault, battery, or assault and battery with a dangerous or deadly weapon;

b. aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law;

c. poisoning with intent to kill;

d. shooting or discharging a firearm with intent to kill;

e. assault with intent to kill;

f. assault with intent to commit a felony;

g. assaults while masked or disguised;

h. murder in the first degree;

i. murder in the second degree;

j. manslaughter in the first degree;

k. manslaughter in the second degree;

l. kidnapping;

m. burglary in the first degree;

n. burglary with explosives;

o. kidnapping for extortion;

p. maiming;

q. robbery;

r. robbery in the first degree;

s. robbery in the second degree;

t. armed robbery;

u. robbery by two (2) or more persons;

v. robbery with dangerous weapon or imitation firearm;

w. child abuse;

x. wiring any equipment, vehicle or structure with explosives;

y. forcible sodomy;

z. rape in the first degree;

aa. rape in the second degree;

bb. rape by instrumentation;

cc. lewd or indecent proposition or lewd or indecent act with a child;

dd. use of a firearm or offensive weapon to commit or attempt to commit a felony;

ee. pointing firearms;

ff. rioting;

gg. inciting to riot;

hh. arson in the first degree;

ii. injuring or burning public buildings;

jj. sabotage;

kk. criminal syndicalism;

ll. extortion;

mm. obtaining signature by extortion;

nn. seizure of a bus, discharging firearm or hurling missile at bus;

oo. mistreatment of a mental patient; or

pp. using a vehicle to facilitate the discharge of a weapon pursuant to Section 652 of Title 21 of the Oklahoma Statutes.

SECTION 9. REPEALER 21 O.S. 2001, Sections 888, as amended by Section 4, Chapter 455, O.S.L. 2002, 1115, as amended by Section 5, Chapter 455, O.S.L. 2002, and 1123, as amended by Section

6, Chapter 455, O.S. L. 2002 (21 O.S. Supp. 2008, Sections 888, 1115, 1123), are hereby repealed.

SECTION 10. This act shall become effective July 1, 2009.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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