

1 **SENATE FLOOR VERSION**

2 April 2, 2013

3 ENGROSSED HOUSE
4 BILL NO. 1297

By: Sherrer and Hoskin of the
House

5 and

6 Ivester of the Senate

7
8
9 An Act relating to crimes and punishments; amending
10 21 O.S. 2011, Section 1123, as amended by Section 5,
Chapter 226, O.S.L 2010, which relates to lewd or
11 indecent proposals or acts; modifying penalty;
repealing 21 O.S. 2011, Section 1123, as amended by
12 Section 6, Chapter 455, O.S.L. 2002, which is a
duplicate section of law; and providing an effective
13 date.

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

16 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1123, as
17 amended by Section 5, Chapter 226, O.S.L. 2010, is amended to read
18 as follows:

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

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

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

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

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

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

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

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

11 Any person convicted of any violation of this subsection shall
12 be punished by imprisonment in the custody of the Department of
13 Corrections for not less than three (3) years nor more than twenty
14 (20) years, except when the child is under twelve (12) years of age
15 at the time the offense is committed, and in such case the person
16 shall, upon conviction, be punished by imprisonment in the custody
17 of the Department of Corrections for not less than twenty-five (25)
18 years. The provisions of this subsection shall not apply unless the
19 accused is at least three (3) years older than the victim, except
20 when accomplished by the use of force or fear. ~~Any~~ Except as
21 provided in Section 51.1a of this title, any person convicted of a
22 second or subsequent violation of this subsection shall be guilty of
23 a felony punishable as provided in this subsection and shall not be
24 eligible for probation, suspended or deferred sentence. ~~Any~~ Except

1 as provided in Section 51.1a of this title, any person convicted of
2 a third or subsequent violation of this subsection shall be guilty
3 of a felony punishable by imprisonment in the custody of the
4 Department of Corrections for a term of life or life without parole,
5 in the discretion of the jury, or in case the jury fails or refuses
6 to fix punishment then the same shall be pronounced by the court.
7 Any person convicted of a violation of this subsection after having
8 been twice convicted of a violation of subsection A of Section 1114
9 of this title, Section 888 of this title, sexual abuse of a child
10 pursuant to Section 843.5 of this title, or of any attempt to commit
11 any of these offenses or any combination of convictions pursuant to
12 these sections shall be punished by imprisonment in the custody of
13 the Department of Corrections for a term of life or life without
14 parole.

15 B. No person shall commit sexual battery on any other person.
16 "Sexual battery" shall mean the intentional touching, mauling or
17 feeling of the body or private parts of any person sixteen (16)
18 years of age or older, in a lewd and lascivious manner:

19 1. Without the consent of that person;

20 2. When committed by a state, county, municipal or political
21 subdivision employee or a contractor or an employee of a contractor
22 of the state, a county, a municipality or political subdivision of
23 this state upon a person who is under the legal custody, supervision
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1 or authority of a state agency, a county, a municipality or a
2 political subdivision of this state; or

3 3. When committed upon a person who is at least sixteen (16)
4 years of age and is less than twenty (20) years of age and is a
5 student, or in the legal custody or supervision of any public or
6 private elementary or secondary school, or technology center school,
7 by a person who is eighteen (18) years of age or older and is an
8 employee of the same school system that the victim attends.

9 As used in this subsection, "employee of the same school system"
10 means a teacher, principal or other duly appointed person employed
11 by a school system or an employee of a firm contracting with a
12 school system who exercises authority over the victim.

13 C. No person shall in any manner lewdly or lasciviously:

14 1. Look upon, touch, maul, or feel the body or private parts of
15 any human corpse in any indecent manner relating to sexual matters
16 or sexual interest; or

17 2. Urinate, defecate or ejaculate upon any human corpse.

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

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

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

11 SECTION 2. REPEALER 21 O.S. 2011, Section 1123, as
12 amended by Section 6, Chapter 455, O.S.L. 2002, is hereby repealed.

13 SECTION 3. This act shall become effective November 1, 2013.

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
15 April 2, 2013 - DO PASS
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