

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 637

By: Treat and Pittman of the  
Senate

3

and

4

Echols of the House

5

6

7

8 [ crime and punishment - definition of rape - rape by  
9 instrumentation - sexual battery - effective date ]

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AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
entire bill and insert

13

14 "An Act relating to crime and punishment; amending 21  
15 O.S. 2011, Sections 1111, 1111.1 and 1123, as  
16 amended by Section 1, Chapter 138, O.S.L. 2013 (21  
17 O.S. Supp. 2014, Section 1123), which relate to the  
18 crime of rape, rape by instrumentation and sexual  
battery; expanding scope of rape, rape by  
instrumentation and sexual battery to include  
certain circumstances; and providing an effective  
date.

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

22 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1111, is

23 amended to read as follows:

24

1 Section 1111. A. Rape is an act of sexual intercourse  
2 involving vaginal or anal penetration accomplished with a male or  
3 female who is not the spouse of the perpetrator and who may be of  
4 the same or the opposite sex as the perpetrator under any of the  
5 following circumstances:

6 1. Where the victim is under sixteen (16) years of age;

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

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

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

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

17 6. Where the victim submits to sexual intercourse under the  
18 belief that the person committing the act is a spouse, and this  
19 belief is induced by artifice, pretense, or concealment practiced by  
20 the accused or by the accused in collusion with the spouse with  
21 intent to induce that belief. In all cases of collusion between the  
22 accused and the spouse to accomplish such act, both the spouse and  
23 the accused, upon conviction, shall be deemed guilty of rape;

24

1           7. Where the victim is under the legal custody or supervision  
2 of a state agency, a federal agency, a county, a municipality or a  
3 political subdivision and engages in sexual intercourse with a  
4 state, federal, county, municipal or political subdivision employee  
5 or an employee of a contractor of the state, the federal government,  
6 a county, a municipality or a political subdivision that exercises  
7 authority over the victim; ~~or~~

8           8. Where the victim is at least sixteen (16) years of age and  
9 is less than twenty (20) years of age and is a student, or under the  
10 legal custody or supervision of any public or private elementary or  
11 secondary school, junior high or high school, or public vocational  
12 school, and engages in sexual intercourse with a person who is  
13 eighteen (18) years of age or older and is an employee of the same  
14 school system; or

15           9. Where the victim is nineteen (19) years of age or younger  
16 and is in the legal custody of a state agency, federal agency or  
17 tribal court and engages in sexual intercourse with a foster parent  
18 or foster parent applicant.

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

23           SECTION 2.           AMENDATORY           21 O.S. 2011, Section 1111.1, is  
24 amended to read as follows:

1 Section 1111.1 A. Rape by instrumentation is an act within or  
2 without the bonds of matrimony in which any inanimate object or any  
3 part of the human body, not amounting to sexual intercourse is used  
4 in the carnal knowledge of another person without his or her consent  
5 and penetration of the anus or vagina occurs to that person.

6 B. Provided, further, that at least one of the circumstances  
7 specified in Section 1111 of this title has been met; further, where  
8 the victim is at least sixteen (16) years of age and is less than  
9 twenty (20) years of age and is a student, or under the legal  
10 custody or supervision of any public or private elementary or  
11 secondary school, junior high or high school, or public vocational  
12 school, and engages in conduct prohibited by this section of law  
13 with a person who is eighteen (18) years of age or older and is an  
14 employee of the same school system, or where the victim is under the  
15 legal custody or supervision of a state or federal agency, county,  
16 municipal or a political subdivision and engages in conduct  
17 prohibited by this section of law with a federal, state, county,  
18 municipal or political subdivision employee or an employee of a  
19 contractor of the state, the federal government, a county, a  
20 municipality or a political subdivision that exercises authority  
21 over the victim, consent shall not be an element of the crime.

22 C. Provided, further, that at least one of the circumstances  
23 specified in Section 1111 of this title has been met; further, where  
24 the victim is nineteen (19) years of age or younger and in the legal

1 custody of a state agency, federal agency or tribal court and  
2 engages in conduct prohibited by this section of law with a foster  
3 parent or foster parent applicant.

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

12 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1123, as  
13 amended by Section 1, Chapter 138, O.S.L. 2013 (21 O.S. Supp. 2014,  
14 Section 1123), is amended to read as follows:

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

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

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

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

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

14 5. In a lewd and lascivious manner and for the purpose of  
15 sexual gratification:

- 16 a. urinate or defecate upon a child under sixteen (16)  
17 years of age,
- 18 b. ejaculate upon or in the presence of a child,
- 19 c. cause, expose, force or require a child to look upon  
20 the body or private parts of another person,
- 21 d. force or require any child under sixteen (16) years of  
22 age or other individual the person believes to be a  
23 child under sixteen (16) years of age, to view any  
24 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~~ the 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, except when the child is under twelve (12) years of age  
11 at the time the offense is committed, and in such case the person  
12 shall, upon conviction, be punished by imprisonment in the custody  
13 of the Department of Corrections for not less than twenty-five (25)  
14 years. The provisions of this subsection shall not apply unless the  
15 accused is at least three (3) years older than the victim, except  
16 when accomplished by the use of force or fear. Except as provided  
17 in Section 51.1a of this title, any person convicted of a second or  
18 subsequent violation of this subsection shall be guilty of a felony  
19 punishable as provided in this subsection and shall not be eligible  
20 for probation, suspended or deferred sentence. Except as provided  
21 in Section 51.1a of this title, any person convicted of a third or  
22 subsequent violation of this subsection shall be guilty of a felony  
23 punishable by imprisonment in the custody of the Department of  
24 Corrections for a term of life or life without parole, in the

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

11 B. No person shall commit sexual battery on any other person.

12 "Sexual battery" shall mean the intentional touching, mauling or  
13 feeling of the body or private parts of any person sixteen (16)  
14 years of age or older, in a lewd and lascivious manner:

15 1. Without the consent of that person;

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

22 3. When committed upon a person who is at least sixteen (16)  
23 years of age and is less than twenty (20) years of age and is a  
24 student, or in the legal custody or supervision of any public or

1 private elementary or secondary school, or technology center school,  
2 by a person who is eighteen (18) years of age or older and is an  
3 employee of the same school system that the victim attends; or

4 4. When committed upon a person who is nineteen (19) years of  
5 age or younger and is in the legal custody of a state agency,  
6 federal agency or a tribal court, by a foster parent or foster  
7 parent applicant.

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

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

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

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

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

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

9 SECTION 4. This act shall become effective November 1, 2015."

10 Passed the House of Representatives the 1st day of April, 2015.

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13 \_\_\_\_\_  
14 Presiding Officer of the House of  
Representatives

15 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2015.

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19 Presiding Officer of the Senate

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1 ENGROSSED SENATE  
2 BILL NO. 637

By: Treat and Pittman of the  
Senate

3 and

4 Echols of the House

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7 [ crime and punishment - definition of rape - rape by  
8 instrumentation - sexual battery - effective date ]  
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10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1111, is  
12 amended to read as follows:

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

18 1. Where the victim is under sixteen (16) years 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;

24

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) years of age and  
21 is less than twenty (20) years of age and is a student, or under the  
22 legal custody or supervision of any public or private elementary or  
23 secondary school, junior high or high school, or public vocational  
24 school, and engages in sexual intercourse with a person who is

1 eighteen (18) years of age or older and is an employee of the same  
2 school system; or

3 9. Where the victim is nineteen (19) years of age or younger  
4 and is in the legal custody of a state agency, federal agency or  
5 tribal court and engages in sexual intercourse with a foster parent  
6 or foster parent applicant.

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

11 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1111.1, is  
12 amended to read as follows:

13 Section 1111.1. A. Rape by instrumentation is an act within or  
14 without the bonds of matrimony in which any inanimate object or any  
15 part of the human body, not amounting to sexual intercourse is used  
16 in the carnal knowledge of another person without his or her consent  
17 and penetration of the anus or vagina occurs to that person.

18 B. Provided, further, that at least one of the circumstances  
19 specified in Section 1111 of this title has been met; further, where  
20 the victim is at least sixteen (16) years of age and is less than  
21 twenty (20) years of age and is a student, or under the legal  
22 custody or supervision of any public or private elementary or  
23 secondary school, junior high or high school, or public vocational  
24 school, and engages in conduct prohibited by this section of law

1 with a person who is eighteen (18) years of age or older and is an  
2 employee of the same school system, or where the victim is under the  
3 legal custody or supervision of a state or federal agency, county,  
4 municipal or a political subdivision and engages in conduct  
5 prohibited by this section of law with a federal, state, county,  
6 municipal or political subdivision employee or an employee of a  
7 contractor of the state, the federal government, a county, a  
8 municipality or a political subdivision that exercises authority  
9 over the victim, consent shall not be an element of the crime.

10 C. Provided, further, that at least one of the circumstances  
11 specified in Section 1111 of this title has been met; further, where  
12 the victim is nineteen (19) years of age or younger and in the legal  
13 custody of a state agency, federal agency or tribal court and  
14 engages in conduct prohibited by this section of law with a foster  
15 parent or foster parent applicant.

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

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1 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1123, as  
2 amended by Section 1, Chapter 138, O.S.L. 2013 (21 O.S. Supp. 2014,  
3 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 years of age, or other individual the person believes to be a child  
9 under sixteen (16) years of age, for the child to have unlawful  
10 sexual relations or sexual intercourse with any person; or

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

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

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

24

1 years of age in any indecent manner or in any manner relating to  
2 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 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) years of  
11 age or other individual the person believes to be a  
12 child under sixteen (16) years of age, to view any  
13 obscene materials, child pornography or materials  
14 deemed harmful to minors as such terms are defined by  
15 Sections 1024.1 and 1040.75 of this title,

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

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

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

1 shall, upon conviction, be punished by imprisonment in the custody  
2 of the Department of Corrections for not less than twenty-five (25)  
3 years. The provisions of this subsection shall not apply unless the  
4 accused is at least three (3) years older than the victim, except  
5 when accomplished by the use of force or fear. Except as provided  
6 in Section 51.1a of this title, any person convicted of a second or  
7 subsequent violation of this subsection shall be guilty of a felony  
8 punishable as provided in this subsection and shall not be eligible  
9 for probation, suspended or deferred sentence. Except as provided  
10 in Section 51.1a of this title, any person convicted of a third or  
11 subsequent violation of this subsection shall be guilty of a felony  
12 punishable by imprisonment in the custody of the Department of  
13 Corrections for a term of life or life without parole, in the  
14 discretion of the jury, or in case the jury fails or refuses to fix  
15 punishment then the same shall be pronounced by the court. Any  
16 person convicted of a violation of this subsection after having been  
17 twice convicted of a violation of subsection A of Section 1114 of  
18 this title, Section 888 of this title, sexual abuse of a child  
19 pursuant to Section 843.5 of this title, or of any attempt to commit  
20 any of these offenses or any combination of convictions pursuant to  
21 these sections shall be punished by imprisonment in the custody of  
22 the Department of Corrections for a term of life or life without  
23 parole.

24

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

5 1. Without the consent of that person;

6 2. When committed by a state, county, municipal or political  
7 subdivision employee or a contractor or an employee of a contractor  
8 of the state, a county, a municipality or political subdivision of  
9 this state upon a person who is under the legal custody, supervision  
10 or authority of a state agency, a county, a municipality or a  
11 political subdivision of this state; ~~or~~

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

18 4. When committed upon a person who is nineteen (19) years of  
19 age or younger and is in the legal custody of a state agency,  
20 federal agency or a tribal court, by a foster parent or foster  
21 parent applicant.

22 As used in this subsection, "employee of the same school system"  
23 means a teacher, principal or other duly appointed person employed  
24

1 by a school system or an employee of a firm contracting with a  
2 school system who exercises authority over the victim.

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

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

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

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

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

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

24 SECTION 4. This act shall become effective November 1, 2015.

