

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2398

By: Biggs of the House and Griffin of the Senate

Title: Crime victims; directing the Department of Corrections to give certain notice to Oklahoma Victim Information and Notification Everyday (VINE) service; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Allen _____
 Anderson _____
 Barrington _____
 Bass _____
 Bice _____
 Boggs _____
 Brecheen _____
 Brooks _____
 Brown _____
 Crain _____
 Dahm _____
 David _____
 Dossett _____
 Fields _____
 Floyd _____
 Ford _____
 Fry _____
 Garrison _____
 Griffin _____
 Halligan _____
 Holt _____
 Jech _____
 Jolley _____
 Justice _____

Loveless _____
 Marlatt _____
 Matthews _____
 Mazzei _____
 Newberry _____
 Paddock _____
 Pittman _____
 Quinn _____
 Sharp _____
 Shaw _____
 Shortey _____
 Silk _____
 Simpson _____
 Smalley _____
 Sparks _____
 Standridge _____
 Stanislawski _____
 Sykes _____
 Thompson _____
 Treat _____
 Wyrick _____
 Yen _____

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2398

By: Biggs, Tadlock, Sanders and
Jordan of the House

and

Griffin and Brooks of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; creating the Justice for J.W. Act of 2016; defining terms; directing the Oklahoma Court of Criminal Appeals to publish certain jury instructions; amending 21 O.S. 2011, Section 888, which relates to forcible sodomy; expanding scope of crime; providing for codification; providing for noncodification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Justice for J.W. Act of 2016".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 111 of Title 21, unless there is
3 created a duplication in numbering, reads as follows:

4 A. In all instances of sexual assault including, but not
5 limited to, rape, rape by instrumentation and forcible sodomy where
6 force is alleged, the term "force" shall mean any force, no matter
7 how slight, necessary to accomplish the act without the consent of
8 the victim. The force necessary to constitute an element need not
9 be actual physical force since fear, fright or coercion may take the
10 place of actual physical force.

11 B. The Oklahoma Court of Criminal Appeals is requested and
12 authorized to proceed to prescribe, institute and publish within ten
13 (10) days of the effective date of this act a uniform instruction to
14 be given in jury trials of criminal cases that defines the term
15 "force" consistent with the definition provided for in subsection A
16 of this section.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 112 of Title 21, unless there is
19 created a duplication in numbering, reads as follows:

20 The term "sexual assault" is any type of sexual contact or
21 behavior that occurs without explicit consent of the recipient
22 including, but not limited to, forced sexual intercourse, forcible
23 sodomy, child molestation, child sexual abuse, incest, fondling and
24 all attempts to complete any of the aforementioned acts.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 113 of Title 21, unless there is
3 created a duplication in numbering, reads as follows:

4 The term "consent" means the affirmative, unambiguous and
5 voluntary agreement to engage in a specific sexual activity during a
6 sexual encounter which can be revoked at any time. Consent cannot
7 be:

8 1. Given by an individual who:

9 a. is asleep or is mentally or physically incapacitated
10 either through the effect of drugs or alcohol or for
11 any other reason, or

12 b. is under duress, threat, coercion or force; or

13 2. Inferred under circumstances in which consent is not clear
14 including, but not limited to:

15 a. the absence of an individual saying "no" or "stop", or

16 b. the existence of a prior or current relationship or
17 sexual activity.

18 SECTION 5. AMENDATORY 21 O.S. 2011, Section 888, is
19 amended to read as follows:

20 Section 888. A. Any person who forces another person to engage
21 in the detestable and abominable crime against nature, pursuant to
22 Section 886 of this title, upon conviction, is guilty of a felony
23 punishable by imprisonment in the custody of the Department of
24 Corrections for a period of not more than twenty (20) years. Except

1 for persons sentenced to life or life without parole, any person
2 sentenced to imprisonment for two (2) years or more for a violation
3 of this subsection 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. Any
9 person convicted of a second violation of this section, where the
10 victim of the second offense is a person under sixteen (16) years of
11 age, shall not be eligible for probation, suspended or deferred
12 sentence. Any person convicted of a third or subsequent violation
13 of this section, where the victim of the third or subsequent offense
14 is a person under sixteen (16) years of age, shall be punished by
15 imprisonment in the custody of the Department of Corrections for a
16 term of life or life without parole, in the discretion of the jury,
17 or in case the jury fails or refuses to fix punishment then the same
18 shall be pronounced by the court. Any person convicted of a
19 violation of this subsection after having been twice convicted of a
20 violation of subsection A of Section 1114 of this title, a violation
21 of Section 1123 of this title or sexual abuse of a child pursuant to
22 Section 843.5 of this title, or of any attempt to commit any of
23 these offenses or any combination of said offenses, shall be

1 punished by imprisonment in the custody of the Department of
2 Corrections for a term of life or life without parole.

3 B. The crime of forcible sodomy shall include:

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

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

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

13 4. Sodomy committed by a state, county, municipal or political
14 subdivision employee or a contractor or an employee of a contractor
15 of the state, a county, a municipality or political subdivision of
16 this state upon a person who is under the legal custody, supervision
17 or authority of a state agency, a county, a municipality or a
18 political subdivision of this state; ~~or~~

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

1 6. Sodomy committed upon a person who is at the time
2 unconscious of the nature of the act, and this fact should be known
3 to the accused; or

4 7. Sodomy committed upon a person where the person is
5 intoxicated by a narcotic or anesthetic agent administered by or
6 with the privity of the accused as a means of forcing the person to
7 submit.

8 SECTION 6. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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13 55-2-9907 GRS 05/03/16
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