

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1005

By: Griffin of the Senate

and

Kannady of the House

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending 21 O.S. 2011, Section 748.2, as last amended by Section 2, Chapter 309, O.S.L. 2014 (21 O.S. Supp. 2017, Section 748.2), which relates to rights of human trafficking victims; authorizing protective custody of minor under certain circumstances; establishing procedures for assuming emergency custody; providing for certain emergency social services; modifying custodial time limitation for show-cause hearing; prohibiting delinquency proceedings or criminal prosecution under certain circumstances; amending 21 O.S. 2011, Section 888, as last amended by Section 1, Chapter 128, O.S.L. 2017 (21 O.S. Supp. 2017, Section 888), which relates to forcible sodomy; modifying inclusions; providing definition; amending 21 O.S. 2011, Section 1111, as last amended by Section 2, Chapter 128, O.S.L. 2017 (21 O.S. Supp. 2017, Section 1111), which relates to the definition of rape; modifying inclusions; providing definition; amending 21 O.S. 2011, Section 1123, as last amended by Section 3, Chapter 128, O.S.L. 2017 (21 O.S. Supp. 2017, Section 1123), which relates to lewd or indecent proposals or acts as to child; modifying inclusions; providing definition; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 748.2, as last amended by Section 2, Chapter 309, O.S.L. 2014 (21 O.S. Supp. 2017, Section 748.2), is amended to read as follows:

Section 748.2 A. Human trafficking victims shall:

1. Be housed in an appropriate shelter as soon as practicable;

2. Not be detained in facilities inappropriate to their status as crime victims;

3. Not be jailed, fined, or otherwise penalized due to having been trafficked;

4. Receive prompt medical care, mental health care, food, and other assistance, as necessary;

5. Have access to legal assistance, information about their rights, and translation services, as necessary; and

6. Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a trafficker, including:

a. taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals, and

b. ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

B. Any person aggrieved by a violation of subsection B of Section 748 of this title may bring a civil action against the

1 person or persons who committed the violation to recover actual and
2 punitive damages and reasonable attorney fees and costs. The civil
3 action brought under this section may be instituted in the district
4 court in this state in the county in which the prospective defendant
5 resides or has committed any act which subjects him or her to
6 liability under this section. A criminal case or prosecution is not
7 a necessary precedent to the civil action. The statute of
8 limitations for the cause of action shall not commence until the
9 latter of the victim's emancipation from the defendant, the victim's
10 twenty-first birthday, or the plaintiff discovers or reasonably
11 should have discovered that he or she was a victim of human
12 trafficking and that the defendant caused, was responsible for or
13 profited from the human trafficking.

14 C. Upon availability of funds, the Attorney General is
15 authorized to establish an emergency hotline number for victims of
16 human trafficking to call in order to request assistance or rescue.
17 The Attorney General is authorized to enter into agreements with the
18 county departments of health to require posting of the rights
19 contained in this section along with the hotline number for
20 publication in locations as directed by the State Department of
21 Health.

22 D. Any peace officer who comes in contact with a human
23 trafficking victim shall inform the victim of the human trafficking
24 emergency hotline number and give notice to the victim of certain

1 rights. The notice shall consist of handing the victim a written
2 statement of the rights provided for in subsection A of this
3 section.

4 E. ~~Upon a showing that a minor may be a victim of human~~
5 ~~trafficking or sexual abuse, the law enforcement officer shall~~
6 ~~immediately notify the Department of Human Services and the minor~~
7 ~~shall be transferred to the custody of the Department of Human~~
8 ~~Services~~ Any peace officer or employee of a district court, juvenile
9 bureau or Office of Juvenile Affairs who has reasonable suspicion
10 that a minor may be a victim of human trafficking and is in need of
11 immediate protection shall assume protective custody over the minor
12 and immediately notify the Department of Human Services. The minor
13 shall be transferred to the emergency custody of the Department
14 pursuant to the provisions of Section 1-4-201 of Title 10A of the
15 Oklahoma Statutes. While in custody of the Department, the minor
16 shall be provided with any necessary emergency social services which
17 include, but shall not be limited to, medical examination or
18 treatment, or a mental health assessment.

19 Law enforcement and the Department of Human Services shall
20 conduct a joint investigation into the claim.

21 The minor shall remain in the custody of the Department of Human
22 Services until the investigation has been completed, but for no
23 longer than ~~seventy-two (72) hours~~ two (2) judicial days, for the
24 show-cause hearing. The Department may release the minor to the

1 custody of a parent or legal guardian if it determines the minor
2 will not be subject to further exploitation. If no such
3 determination is made, the minor shall be subject to the deprived
4 child provisions of the Oklahoma Children's Code and made eligible
5 for appropriate child welfare services.

6 ~~If criminal charges were filed against the minor and the~~
7 ~~investigation shows, at the show-cause hearing, that it is more~~
8 ~~likely than not that the minor is a victim of human trafficking or~~
9 ~~sexual abuse, then the criminal charges against the minor shall be~~
10 ~~dismissed and the Department of Human Services case and services~~
11 ~~shall proceed~~ The minor shall not be subject to juvenile delinquency
12 proceedings for prostitution or other nonviolent misdemeanor
13 offenses committed as a direct result of being a victim of human
14 trafficking. It shall be an affirmative defense to delinquency or
15 criminal prosecution for any misdemeanor or felony offense that the
16 offense was committed during the time of and as the direct result of
17 the minor being the victim of human trafficking.

18 SECTION 2. AMENDATORY 21 O.S. 2011, Section 888, as last
19 amended by Section 1, Chapter 128, O.S.L. 2017 (21 O.S. Supp. 2017,
20 Section 888), is amended to read as follows:

21 Section 888. A. Any person who forces another person to engage
22 in the detestable and abominable crime against nature, pursuant to
23 Section 886 of this title, upon conviction, is guilty of a felony
24 punishable by imprisonment in the custody of the Department of

1 Corrections for a period of not more than twenty (20) years. Except
2 for persons sentenced to life or life without parole, any person
3 sentenced to imprisonment for two (2) years or more for a violation
4 of this subsection shall be required to serve a term of post-
5 imprisonment supervision pursuant to subparagraph f of paragraph 1
6 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
7 under conditions determined by the Department of Corrections. The
8 jury shall be advised that the mandatory post-imprisonment
9 supervision shall be in addition to the actual imprisonment. Any
10 person convicted of a second violation of this section, where the
11 victim of the second offense is a person under sixteen (16) years of
12 age, shall not be eligible for probation, suspended or deferred
13 sentence. Any person convicted of a third or subsequent violation
14 of this section, where the victim of the third or subsequent offense
15 is a person under sixteen (16) years of age, shall be punished by
16 imprisonment in the custody of the Department of Corrections for a
17 term of life or life without parole, in the discretion of the jury,
18 or in case the jury fails or refuses to fix punishment then the same
19 shall be pronounced by the court. Any person convicted of a
20 violation of this subsection after having been twice convicted of a
21 violation of subsection A of Section 1114 of this title, a violation
22 of Section 1123 of this title or sexual abuse of a child pursuant to
23 Section 843.5 of this title, or of any attempt to commit any of
24 these offenses or any combination of the offenses, shall be punished

1 by imprisonment in the custody of the Department of Corrections for
2 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;

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;

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;

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 the subcontractor or
19 employee of a subcontractor of the contractor of the state or
20 federal government, a county, a municipality or a political
21 subdivision of this state;

22 5. Sodomy committed upon a person who is at least sixteen (16)
23 years of age but less than twenty (20) years of age and is a student
24 of any public or private secondary school, junior high or high

1 school, or public vocational school, with a person who is eighteen
2 (18) years of age or older and is employed by the same school
3 system;

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

7 7. Sodomy committed upon a person where the person is
8 intoxicated by a narcotic or anesthetic agent administered by or
9 with the privity of the accused as a means of forcing the person to
10 submit; or

11 8. Sodomy committed upon a person who is at least sixteen (16)
12 years of age but less than eighteen (18) years of age by a person
13 responsible for the child's health, safety or welfare. "Person
14 responsible for a child's health, safety or welfare" shall include,
15 but not be limited to:

16 a. a parent,

17 b. a legal guardian,

18 c. custodian,

19 d. a foster parent,

20 e. a person eighteen (18) years of age or older with whom
21 the child's parent cohabitates,

22 f. any other adult residing in the home of the child,

23 g. an agent or employee of a public or private
24 residential home, institution, facility or day

1 treatment program as defined in Section 175.20 of
2 Title 10 of the Oklahoma Statutes, or

3 h. an owner, operator or employee of a child care
4 facility, as defined by Section 402 of Title 10 of the
5 Oklahoma Statutes.

6 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1111, as
7 last amended by Section 2, Chapter 128, O.S.L. 2017 (21 O.S. Supp.
8 2017, Section 1111), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

5 10. Where the victim is at least sixteen (16) years of age but
6 less than eighteen (18) years of age and the perpetrator of the
7 crime is a person responsible for the child's health, safety or
8 welfare. "Person responsible for a child's health, safety or
9 welfare" shall include, but not be limited to:

- 10 a. a parent,
- 11 b. a legal guardian,
- 12 c. custodian,
- 13 d. a foster parent,
- 14 e. a person eighteen (18) years of age or older with whom
15 the child's parent cohabitates,
- 16 f. any other adult residing in the home of the child,
- 17 g. an agent or employee of a public or private
18 residential home, institution, facility or day
19 treatment program as defined in Section 175.20 of
20 Title 10 of the Oklahoma Statutes, or
- 21 h. an owner, operator or employee of a child care
22 facility, as defined by Section 402 of Title 10 of the
23 Oklahoma Statutes.

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

5 SECTION 4. AMENDATORY 21 O.S. 2011, Section 1123, as
6 last amended by Section 3, Chapter 128, O.S.L. 2017 (21 O.S. Supp.
7 2017, Section 1123), is amended to read as follows:

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

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

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

19 3. Ask, invite, entice, or persuade any child under sixteen
20 (16) years of age, or other individual the person believes to be a
21 child under sixteen (16) years of age, to go alone with any person
22 to a secluded, remote, or secret place, with the unlawful and
23 willful intent and purpose then and there to commit any crime
24

1 against public decency and morality, as defined by law, with the
2 child; or

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

7 5. In a lewd and lascivious manner and for the purpose of
8 sexual gratification:

- 9 a. urinate or defecate upon a child under sixteen (16)
10 years of age, or force or require a child to defecate
11 or urinate upon the body or private parts of another,
12 or for the purpose of sexual gratification,
- 13 b. ejaculate upon or in the presence of a child,
- 14 c. cause, expose, force or require a child to look upon
15 the body or private parts of another person,
- 16 d. force or require any child under sixteen (16) years of
17 age or other individual the person believes to be a
18 child under sixteen (16) years of age, to view any
19 obscene materials, child pornography or materials
20 deemed harmful to minors as such terms are defined by
21 Sections 1024.1 and 1040.75 of this title,
- 22 e. cause, expose, force or require a child to look upon
23 sexual acts performed in the presence of the child, or
24

1 f. force or require a child to touch or feel the body or
2 private parts of the child or another person.

3 Any person convicted of any violation of this subsection shall
4 be punished by imprisonment in the custody of the Department of
5 Corrections for not less than three (3) years nor more than twenty
6 (20) years, except when the child is under twelve (12) years of age
7 at the time the offense is committed, and in such case the person
8 shall, upon conviction, be punished by imprisonment in the custody
9 of the Department of Corrections for not less than twenty-five (25)
10 years. The provisions of this subsection shall not apply unless the
11 accused is at least three (3) years older than the victim, except
12 when accomplished by the use of force or fear. Except as provided
13 in Section 51.1a of this title, any person convicted of a second or
14 subsequent violation of this subsection shall be guilty of a felony
15 punishable as provided in this subsection and shall not be eligible
16 for probation, suspended or deferred sentence. Except as provided
17 in Section 51.1a of this title, any person convicted of a third or
18 subsequent violation of this subsection shall be guilty of a felony
19 punishable by imprisonment in the custody of the Department of
20 Corrections for a term of life or life without parole, in the
21 discretion of the jury, or in case the jury fails or refuses to fix
22 punishment then the same shall be pronounced by the court. Any
23 person convicted of a violation of this subsection after having been
24 twice convicted of a violation of subsection A of Section 1114 of

1 this title, Section 888 of this title, sexual abuse of a child
2 pursuant to Section 843.5 of this title, or of any attempt to commit
3 any of these offenses or any combination of convictions pursuant to
4 these sections shall be punished by imprisonment in the custody of
5 the Department of Corrections for a term of life or life without
6 parole.

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

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

11 1. Without the consent of that person;

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

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

1 by a person who is eighteen (18) years of age or older and is an
2 employee of the same school system that the victim attends; or

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

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

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

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

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

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

20 E. The fact that an undercover operative or law enforcement
21 officer was involved in the detection and investigation of an
22 offense pursuant to this section shall not constitute a defense to a
23 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 G. Any parent or person responsible for the child's health,
10 safety or welfare who violates subsection A, B or C of this section
11 when the victim is at least sixteen (16) years of age but less than
12 eighteen (18) years of age, upon conviction, shall be guilty of a
13 felony and shall be punished by imprisonment in the custody of the
14 Department of Corrections for not more than ten (10) years. For
15 purposes of this section, "person responsible for a child's health,
16 safety or welfare" shall include, but not be limited to:

17 a. a parent,

18 b. a legal guardian,

19 c. custodian,

20 d. a foster parent,

21 e. a person eighteen (18) years of age or older with whom
22 the child's parent cohabitates,

23 f. any other adult residing in the home of the child,
24

1 g. an agent or employee of a public or private
2 residential home, institution, facility or day
3 treatment program as defined in Section 175.20 of
4 Title 10 of the Oklahoma Statutes, or

5 h. an owner, operator or employee of a child care
6 facility, as defined by Section 402 of Title 10 of the
7 Oklahoma Statutes.

8 SECTION 5. This act shall become effective November 1, 2018.

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