

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 HOUSE BILL 3302

By: Wright of the House

5 and

6 Griffin of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to crimes and punishments; amending
11 21 O.S. 2011, Section 888, as last amended by Section
12 1, Chapter 128, O.S.L. 2017 (21 O.S. Supp. 2017,
13 Section 888), which relates to the crime of forcible
14 sodomy; expanding scope of crime to include certain
15 persons; defining phrase; amending 21 O.S. 2011,
16 Section 1111, as last amended by Section 2, Chapter
17 128, O.S.L. 2017 (21 O.S. Supp. 2017, Section 1111),
18 which relates to the crime of rape; expanding scope
19 of crime to include certain persons; defining phrase;
20 amending 21 O.S. 2011, Section 1123, as last amended
21 by Section 3, Chapter 128, O.S.L. 2017 (21 O.S. Supp.
22 2017, Section 1123), which relates to lewd or
23 indecent acts to a child; expanding scope of certain
24 prohibited act; providing separate penalty for
 certain persons; defining phrase; and providing an
 effective date.

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

22 SECTION 1. AMENDATORY 21 O.S. 2011, Section 888, as last
23 amended by Section 1, Chapter 128, O.S.L. 2017 (21 O.S. Supp. 2017,
24 Section 888), is amended to read as follows:

1 Section 888. A. Any person who forces another person to engage
2 in the detestable and abominable crime against nature, pursuant to
3 Section 886 of this title, upon conviction, is guilty of a felony
4 punishable by imprisonment in the custody of the Department of
5 Corrections for a period of not more than twenty (20) years. Except
6 for persons sentenced to life or life without parole, any person
7 sentenced to imprisonment for two (2) years or more for a violation
8 of this subsection shall be required to serve a term of post-
9 imprisonment supervision pursuant to subparagraph f of paragraph 1
10 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
11 under conditions determined by the Department of Corrections. The
12 jury shall be advised that the mandatory post-imprisonment
13 supervision shall be in addition to the actual imprisonment. Any
14 person convicted of a second violation of this section, where the
15 victim of the second offense is a person under sixteen (16) years of
16 age, shall not be eligible for probation, suspended or deferred
17 sentence. Any person convicted of a third or subsequent violation
18 of this section, where the victim of the third or subsequent offense
19 is a person under sixteen (16) years of age, shall be punished by
20 imprisonment in the custody of the Department of Corrections for a
21 term of life or life without parole, in the discretion of the jury,
22 or in case the jury fails or refuses to fix punishment then the same
23 shall be pronounced by the court. Any person convicted of a
24 violation of this subsection after having been twice convicted of a

1 violation of subsection A of Section 1114 of this title, a violation
2 of Section 1123 of this title or sexual abuse of a child pursuant to
3 Section 843.5 of this title, or of any attempt to commit any of
4 these offenses or any combination of the offenses, shall be punished
5 by imprisonment in the custody of the Department of Corrections for
6 a term of life or life without parole.

7 B. The crime of forcible sodomy shall include:

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

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

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

17 4. Sodomy committed by a state, county, municipal or political
18 subdivision employee or a contractor or an employee of a contractor
19 of the state, a county, a municipality or political subdivision of
20 this state upon a person who is under the legal custody, supervision
21 or authority of a state agency, a county, a municipality or a
22 political subdivision of this state, or the subcontractor or
23 employee of a subcontractor of the contractor of the state or
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1 federal government, a county, a municipality or a political
2 subdivision of this state;

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

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

12 7. Sodomy committed upon a person where the person is
13 intoxicated by a narcotic or anesthetic agent administered by or
14 with the privity of the accused as a means of forcing the person to
15 submit; or

16 8. Sodomy committed upon a person who is at least sixteen (16)
17 years of age but less than eighteen (18) years of age by a person
18 responsible for the health, safety or welfare of the child.

19 C. As used in this section, "person responsible for the health,
20 safety or welfare of the child" includes the following:

21 1. Parent;

22 2. Legal guardian;

23 3. Custodian;

24 4. Foster parent;

1 5. Person eighteen (18) years of age or older with whom the
2 parent of the child cohabitates or any other adult residing in the
3 home of the child;

4 6. Agent or employee of a public or private residential home,
5 institution, facility or day treatment program as defined in Section
6 175.20 of Title 10 of the Oklahoma Statutes; or

7 7. Owner, operator or employee of a child care facility as
8 defined in Section 402 of Title 10 of the Oklahoma Statutes.

9 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1111, as
10 last amended by Section 2, Chapter 128, O.S.L. 2017 (21 O.S. Supp.
11 2017, Section 1111), is amended to read as follows:

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

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

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

21 3. Where force or violence is used or threatened, accompanied
22 by apparent power of execution to the victim or to another person;
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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 the subcontractor or employee of a
20 subcontractor of the contractor of the state or federal government,
21 a county, a municipality or a political subdivision that exercises
22 authority over the victim;

23 8. Where the victim is at least sixteen (16) years of age and
24 is less than twenty (20) years of age and is a student, or under the

1 legal custody or supervision of any public or private elementary or
2 secondary school, junior high or high school, or public vocational
3 school, and engages in sexual intercourse with a person who is
4 eighteen (18) years of age or older and is an employee of the same
5 school system; ~~or~~

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

10 10. Where the victim is at least sixteen (16) years of age but
11 less than eighteen (18) years of age by a person responsible for the
12 health, safety or welfare of the child.

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

17 C. As used in this section, "person responsible for the health,
18 safety or welfare of the child" includes the following:

19 1. Parent;

20 2. Legal guardian;

21 3. Custodian;

22 4. Foster parent;

1 5. Person eighteen (18) years of age or older with whom the
2 parent of the child cohabitates or any other adult residing in the
3 home of the child;

4 6. Agent or employee of a public or private residential home,
5 institution, facility or day treatment program as defined in Section
6 175.20 of Title 10 of the Oklahoma Statutes; or

7 7. Owner, operator or employee of a child care facility as
8 defined in Section 402 of Title 10 of the Oklahoma Statutes.

9 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1123, as
10 last amended by Section 3, Chapter 128, O.S.L. 2017 (21 O.S. Supp.
11 2017, Section 1123), is amended to read as follows:

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

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

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

23 3. Ask, invite, entice, or persuade any child under sixteen
24 (16) years of age, or other individual the person believes to be a

1 child under sixteen (16) years of age, to go alone with any person
2 to a secluded, remote, or secret place, with the unlawful and
3 willful intent and purpose then and there to commit any crime
4 against public decency and morality, as defined by law, with the
5 child; or

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

10 5. In a lewd and lascivious manner and for the purpose of
11 sexual gratification:

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

- 1 e. cause, expose, force or require a child to look upon
2 sexual acts performed in the presence of the child, or
3 f. force or require a child to touch or feel the body or
4 private parts of the child or another person.

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

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

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

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

13 1. Without the consent of that person;

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

23 3. When committed upon a person who is at least sixteen (16)
24 years of age and is less than twenty (20) years of age and is a

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

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

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 G. Any person responsible for the health, safety or welfare of
12 a child who violates the provisions of subsection A, B or C of this
13 section, where the victim is at least sixteen (16) years of age but
14 less than eighteen (18) years of age shall, upon conviction, be
15 guilty of a felony punishable by imprisonment in the custody of the
16 Department of Corrections for not more than ten (10) years. For
17 purposes of this subsection, "person responsible for the health,
18 safety or welfare of a child" shall include the following:

- 19 1. Parent;
 - 20 2. Legal guardian;
 - 21 3. Custodian;
 - 22 4. Foster parent;
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1 5. Person eighteen (18) years of age or older with whom the
2 parent of the child cohabitates or any other adult residing in the
3 home of the child;

4 6. Agent or employee of a public or private residential home,
5 institution, facility or day treatment program as defined in Section
6 175.20 of Title 10 of the Oklahoma Statutes; or

7 7. Owner, operator or employee of a child care facility as
8 defined in Section 402 of Title 10 of the Oklahoma Statutes.

9 SECTION 4. This act shall become effective November 1, 2018.

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11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/07/2018 - DO
12 PASS, As Coauthored.