

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

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

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1005

By: Griffin of the Senate

and

Kannady of the House

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to crimes and punishments; amending
11 21 O.S. 2011, Section 748.2, as last amended by
12 Section 2, Chapter 309, O.S.L. 2014 (21 O.S. Supp.
13 2017, Section 748.2), which relates to rights of
14 human trafficking victims; authorizing protective
15 custody of minor under certain circumstances;
16 establishing procedures for assuming emergency
17 custody; providing for certain emergency social
18 services; modifying custodial time limitation for
19 show-cause hearing; prohibiting delinquency
20 proceedings or criminal prosecution under certain
21 circumstances; amending 21 O.S. 2011, Section 888, as
22 last amended by Section 1, Chapter 128, O.S.L. 2017
23 (21 O.S. Supp. 2017, Section 888), which relates to
24 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.

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

2 SECTION 1. AMENDATORY 21 O.S. 2011, Section 748.2, as
3 last amended by Section 2, Chapter 309, O.S.L. 2014 (21 O.S. Supp.
4 2017, Section 748.2), is amended to read as follows:

5 Section 748.2 A. Human trafficking victims shall:

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

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

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

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

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

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

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

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

24

1 B. Any person aggrieved by a violation of subsection B of
2 Section 748 of this title may bring a civil action against the
3 person or persons who committed the violation to recover actual and
4 punitive damages and reasonable attorney fees and costs. The civil
5 action brought under this section may be instituted in the district
6 court in this state in the county in which the prospective defendant
7 resides or has committed any act which subjects him or her to
8 liability under this section. A criminal case or prosecution is not
9 a necessary precedent to the civil action. The statute of
10 limitations for the cause of action shall not commence until the
11 latter of the victim's emancipation from the defendant, the victim's
12 twenty-first birthday, or the plaintiff discovers or reasonably
13 should have discovered that he or she was a victim of human
14 trafficking and that the defendant caused, was responsible for or
15 profited from the human trafficking.

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

1 D. Any peace officer who comes in contact with a human
2 trafficking victim shall inform the victim of the human trafficking
3 emergency hotline number and give notice to the victim of certain
4 rights. The notice shall consist of handing the victim a written
5 statement of the rights provided for in subsection A of this
6 section.

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

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

1 The minor shall remain in the custody of the Department of Human
2 Services until the investigation has been completed, but for no
3 longer than ~~seventy-two (72) hours~~ two (2) judicial days, for the
4 show-cause hearing. The Department may release the minor to the
5 custody of a parent or legal guardian if it determines the minor
6 will not be subject to further exploitation. If no such
7 determination is made, the minor shall be subject to the deprived
8 child provisions of the Oklahoma Children's Code and made eligible
9 for appropriate child welfare services.

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

22 SECTION 2. 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
24

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 child's health, safety or welfare. "Person
19 responsible for a child's health, safety or welfare" shall include,
20 but not be limited to:

- 21 a. a parent,
22 b. a legal guardian,
23 c. custodian,
24 d. a foster parent,

- 1 e. a person eighteen (18) years of age or older with whom
2 the child's parent cohabitates,
3 f. any other adult residing in the home of the child,
4 g. an agent or employee of a public or private
5 residential home, institution, facility or day
6 treatment program as defined in Section 175.20 of
7 Title 10 of the Oklahoma Statutes, or
8 h. an owner, operator or employee of a child care
9 facility, as defined by Section 402 of Title 10 of the
10 Oklahoma Statutes.

11 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1111, as
12 last amended by Section 2, Chapter 128, O.S.L. 2017 (21 O.S. Supp.
13 2017, Section 1111), is amended to read as follows:

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

- 19 1. Where the victim is under sixteen (16) years of age;
20 2. Where the victim is incapable through mental illness or any
21 other unsoundness of mind, whether temporary or permanent, of giving
22 legal consent;
23 3. Where force or violence is used or threatened, accompanied
24 by apparent power of execution to the victim or to another person;

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 and the perpetrator of the
12 crime is a person responsible for the child's health, safety or
13 welfare. "Person responsible for a child's health, safety or
14 welfare" shall include, but not be limited to:

15 a. a parent,

16 b. a legal guardian,

17 c. custodian,

18 d. a foster parent,

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

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

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

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

10 SECTION 4. AMENDATORY 21 O.S. 2011, Section 1123, as
11 last amended by Section 3, Chapter 128, O.S.L. 2017 (21 O.S. Supp.
12 2017, Section 1123), is amended to read as follows:

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

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

20 2. Look upon, touch, maul, or feel the body or private parts of
21 any child under sixteen (16) years of age in any lewd or lascivious
22 manner by any acts against public decency and morality, as defined
23 by law; or
24

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

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

12 5. In a lewd and lascivious manner and for the purpose of
13 sexual gratification:

14 a. urinate or defecate upon a child under sixteen (16)
15 years of age, or force or require a child to defecate
16 or urinate upon the body or private parts of another,
17 or for the purpose of sexual gratification,

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 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 the subcontractor or
22 employee of a subcontractor of the contractor of the state or
23 federal government, a county, a municipality or a political
24 subdivision of this state;

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

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

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

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

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

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

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

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

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

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

- 21 a. a parent,
- 22 b. a legal guardian,
- 23 c. custodian,
- 24 d. a foster parent,

- 1 e. a person eighteen (18) years of age or older with whom
2 the child's parent cohabitates,
3 f. any other adult residing in the home of the child,
4 g. an agent or employee of a public or private
5 residential home, institution, facility or day
6 treatment program as defined in Section 175.20 of
7 Title 10 of the Oklahoma Statutes, or
8 h. an owner, operator or employee of a child care
9 facility, as defined by Section 402 of Title 10 of the
10 Oklahoma Statutes.

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

12
13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/28/2018 - DO
14 PASS, As Amended.