

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 ENGROSSED SENATE
5 BILL NO. 273

By: Smalley of the Senate

and

Biggs of the House

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9 An Act relating to crimes and punishment; amending 21
10 O.S. Section 888, as amended by Section 5, Chapter
11 349, O.S.L. 2016 (21 O.S. Supp. 2016, Section 888),
12 which relates to forcible sodomy; modifying
13 inclusions; updating language; amending 21 O.S. 2011,
14 Section 1111, as amended by Section 1, Chapter 67,
15 O.S.L. 2015 (21 O.S. Supp. 2016, Section 1111), which
16 relates to the definition of rape; modifying
17 inclusions; amending 21 O.S. 2011, Section 1123, as
18 last amended by Section 3, Chapter 67, O.S.L. 2015
19 (21 O.S. Supp. 2016, Section 1123), which relates to
20 sexual battery; modifying inclusions; providing an
21 effective date; and declaring an emergency.

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

23 SECTION 1. AMENDATORY 21 O.S. 2011, Section 888, as
24 amended by Section 5, Chapter 349, O.S.L. 2016 (21 O.S. Supp. 2016,
25 Section 888), is amended to read as follows:

26 Section 888. A. Any person who forces another person to engage
27 in the detestable and abominable crime against nature, pursuant to
28 Section 886 of this title, upon conviction, is guilty of a felony

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

1 these offenses or any combination of ~~said~~ the offenses, shall be
2 punished by imprisonment in the custody of the Department of
3 Corrections for a term of life or life without parole.

4 B. The crime of forcible sodomy shall include:

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

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

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

14 4. Sodomy 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 5. Sodomy committed upon a person who is at least sixteen (16)
24 years of age but less than twenty (20) years of age and is a student

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

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

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

12 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1111, as
13 amended by Section 1, Chapter 67, O.S.L. 2015 (21 O.S. Supp. 2016,
14 Section 1111), is amended to read as follows:

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

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

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

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

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

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

8 6. Where the victim submits to sexual intercourse under the
9 belief that the person committing the act is a spouse, and this
10 belief is induced by artifice, pretense, or concealment practiced by
11 the accused or by the accused in collusion with the spouse with
12 intent to induce that belief. In all cases of collusion between the
13 accused and the spouse to accomplish such act, both the spouse and
14 the accused, upon conviction, shall be deemed guilty of rape;

15 7. Where the victim is under the legal custody or supervision
16 of a state agency, a federal agency, a county, a municipality or a
17 political subdivision and engages in sexual intercourse with a
18 state, federal, county, municipal or political subdivision employee
19 or an employee of a contractor of the state, the federal government,
20 a county, a municipality or a political subdivision that exercises
21 authority over the victim, or the subcontractor or employee of a
22 subcontractor of the contractor of the state or federal government,
23 a county, a municipality or a political subdivision that exercises
24 authority over the victim;

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

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

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

16 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1123, as
17 last amended by Section 3, Chapter 67, O.S.L. 2015 (21 O.S. Supp.
18 2016, Section 1123), is amended to read as follows:

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

21 1. Make any oral, written or electronically or computer-
22 generated lewd or indecent proposal to any child under sixteen (16)
23 years of age, or other individual the person believes to be a child
24

1 under sixteen (16) years of age, for the child to have unlawful
2 sexual relations or sexual intercourse with any person; or

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

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

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

18 5. In a lewd and lascivious manner and for the purpose of
19 sexual gratification:

- 20 a. urinate or defecate upon a child under sixteen (16)
21 years of age,
22 b. ejaculate upon or in the presence of a child,
23 c. cause, expose, force or require a child to look upon
24 the body or private parts of another person,

- 1 d. force or require any child under sixteen (16) years of
2 age or other individual the person believes to be a
3 child under sixteen (16) years of age, to view any
4 obscene materials, child pornography or materials
5 deemed harmful to minors as such terms are defined by
6 Sections 1024.1 and 1040.75 of this title,
7 e. cause, expose, force or require a child to look upon
8 sexual acts performed in the presence of the child, or
9 f. force or require a child to touch or feel the body or
10 private parts of the child or another person.

11 Any person convicted of any violation of this subsection shall
12 be punished by imprisonment in the custody of the Department of
13 Corrections for not less than three (3) years nor more than twenty
14 (20) years, except when the child is under twelve (12) years of age
15 at the time the offense is committed, and in such case the person
16 shall, upon conviction, be punished by imprisonment in the custody
17 of the Department of Corrections for not less than twenty-five (25)
18 years. The provisions of this subsection shall not apply unless the
19 accused is at least three (3) years older than the victim, except
20 when accomplished by the use of force or fear. Except as provided
21 in Section 51.1a of this title, any person convicted of a second or
22 subsequent violation of this subsection shall be guilty of a felony
23 punishable as provided in this subsection and shall not be eligible
24 for probation, suspended or deferred sentence. Except as provided

1 in Section 51.1a of this title, any person convicted of a third or
2 subsequent violation of this subsection shall be guilty of a felony
3 punishable by imprisonment in the custody of the Department of
4 Corrections for a term of life or life without parole, in the
5 discretion of the jury, or in case the jury fails or refuses to fix
6 punishment then the same shall be pronounced by the court. Any
7 person convicted of a violation of this subsection after having been
8 twice convicted of a violation of subsection A of Section 1114 of
9 this title, Section 888 of this title, sexual abuse of a child
10 pursuant to Section 843.5 of this title, or of any attempt to commit
11 any of these offenses or any combination of convictions pursuant to
12 these sections shall be punished by imprisonment in the custody of
13 the Department of Corrections for a term of life or life without
14 parole.

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

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

19 1. Without the consent of that person;

20 2. When committed by a state, county, municipal or political
21 subdivision employee or a contractor or an employee of a contractor
22 of the state, a county, a municipality or political subdivision of
23 this state upon a person who is under the legal custody, supervision
24 or authority of a state agency, a county, a municipality or a

1 political subdivision of this state, or the subcontractor or
2 employee of a subcontractor of the contractor of the state or
3 federal government, a county, a municipality or a political
4 subdivision of this state;

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

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

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

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

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

23 2. Urinate, defecate or ejaculate upon any human corpse.
24

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

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

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

17 SECTION 4. This act shall become effective July 1, 2017.

18 SECTION 5. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL JUSTICE AND
24 CORRECTIONS, dated 04/12/2017 - DO PASS.