

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

SENATE BILL 273

By: Smalley

AS INTRODUCED

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

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

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

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

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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;

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.

11 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1111, as
12 amended by Section 1, Chapter 67, O.S.L. 2015 (21 O.S. Supp. 2016,
13 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.

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

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

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

19 1. Make any oral, written or electronically or computer-
20 generated lewd or indecent proposal to any child under sixteen (16)
21 years of age, or other individual the person believes to be a child
22 under sixteen (16) years of age, for the child to have unlawful
23 sexual relations or sexual intercourse with any person; or
24

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

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

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

16 5. In a lewd and lascivious manner and for the purpose of
17 sexual gratification:

18 a. urinate or defecate upon a child under sixteen (16)
19 years of age,

20 b. ejaculate upon or in the presence of a child,

21 c. cause, expose, force or require a child to look upon
22 the body or private parts of another person,

23 d. force or require any child under sixteen (16) years of
24 age or other individual the person believes to be a

1 child under sixteen (16) years of age, to view any
2 obscene materials, child pornography or materials
3 deemed harmful to minors as such terms are defined by
4 Sections 1024.1 and 1040.75 of this title,

5 e. cause, expose, force or require a child to look upon
6 sexual acts performed in the presence of the child, or

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

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

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

13 B. No person shall commit sexual battery on any other person.
14 "Sexual battery" shall mean the intentional touching, mauling or
15 feeling of the body or private parts of any person sixteen (16)
16 years of age or older, in a lewd and lascivious manner:

17 1. Without the consent of that person;

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

1 federal government, a county, a municipality or a political
2 subdivision of this state;

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

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

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

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

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

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

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

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

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

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

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

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