

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3302

By: Wright

AS INTRODUCED

An Act relating to crimes and punishments; 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 the crime of forcible sodomy; expanding scope of crime to include certain persons; defining phrase; 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 crime of rape; expanding scope of crime to include certain persons; defining phrase; 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 acts to a child; expanding scope of certain prohibited act; providing separate penalty for certain persons; defining phrase; and providing an effective date.

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

SECTION 1. AMENDATORY 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), 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

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 the offenses, shall be punished
2 by imprisonment in the custody of the Department of Corrections for
3 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; or

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

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

17 1. Parent;

18 2. Legal guardian;

19 3. Custodian;

20 4. Foster parent;

21 5. Person eighteen (18) years of age or older with whom the
22 parent of the child cohabitates or any other adult residing in the
23 home of the child;
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1 6. Agent or employee of a public or private residential home,
2 institution, facility or day treatment program as defined in Section
3 175.20 of Title 10 of the Oklahoma Statutes; or

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

6 SECTION 2. 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 by a person responsible for the
7 health, safety or welfare of the child.

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

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

14 1. Parent;

15 2. Legal guardian;

16 3. Custodian;

17 4. Foster parent;

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

21 6. Agent or employee of a public or private residential home,
22 institution, facility or day treatment program as defined in Section
23 175.20 of Title 10 of the Oklahoma Statutes; or

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

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

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

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

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

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

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

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

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

1 Any person convicted of any violation of this subsection shall
2 be punished by imprisonment in the custody of the Department of
3 Corrections for not less than three (3) years nor more than twenty
4 (20) years, except when the child is under twelve (12) years of age
5 at the time the offense is committed, and in such case the person
6 shall, upon conviction, be punished by imprisonment in the custody
7 of the Department of Corrections for not less than twenty-five (25)
8 years. The provisions of this subsection shall not apply unless the
9 accused is at least three (3) years older than the victim, except
10 when accomplished by the use of force or fear. Except as provided
11 in Section 51.1a of this title, any person convicted of a second or
12 subsequent violation of this subsection shall be guilty of a felony
13 punishable as provided in this subsection and shall not be eligible
14 for probation, suspended or deferred sentence. Except as provided
15 in Section 51.1a of this title, any person convicted of a third or
16 subsequent violation of this subsection shall be guilty of a felony
17 punishable by imprisonment in the custody of the Department of
18 Corrections for a term of life or life without parole, in the
19 discretion of the jury, or in case the jury fails or refuses to fix
20 punishment then the same shall be pronounced by the court. Any
21 person convicted of a violation of this subsection after having been
22 twice convicted of a violation of subsection A of Section 1114 of
23 this title, Section 888 of this title, sexual abuse of a child
24 pursuant to Section 843.5 of this title, or of any attempt to commit

1 any of these offenses or any combination of convictions pursuant to
2 these sections shall be punished by imprisonment in the custody of
3 the Department of Corrections for a term of life or life without
4 parole.

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

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

9 1. Without the consent of that person;

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

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

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

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

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

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

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

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

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

22 F. Except for persons sentenced to life or life without parole,
23 any person sentenced to imprisonment for two (2) years or more for a
24 violation of this section shall be required to serve a term of post-

1 imprisonment supervision pursuant to subparagraph f of paragraph 1
2 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
3 under conditions determined by the Department of Corrections. The
4 jury shall be advised that the mandatory post-imprisonment
5 supervision shall be in addition to the actual imprisonment.

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

14 1. Parent;

15 2. Legal guardian;

16 3. Custodian;

17 4. Foster parent;

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

21 6. Agent or employee of a public or private residential home,
22 institution, facility or day treatment program as defined in Section
23 175.20 of Title 10 of the Oklahoma Statutes; or
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1 7. Owner, operator or employee of a child care facility as
2 defined in Section 402 of Title 10 of the Oklahoma Statutes.

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

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