

An Act

ENROLLED HOUSE
BILL NO. 3258

By: Nollan of the House

and

Haste of the Senate

An Act relating to sex crimes; amending 21 O.S. 2021, Section 888, which relates to penalties for sodomy; modifying elements of certain crime; expanding scope of crime to include certain category of victims; defining term; amending 21 O.S. 2021, Sections 1111, 1111.1, and 1123, which relate to rape, rape by instrumentation, and lewd or indecent acts or proposals to a child; modifying elements of certain crimes; expanding scope of crimes to include certain category of victims; defining term; modifying definition; and providing an effective date.

SUBJECT: Sex crimes

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

SECTION 1. AMENDATORY 21 O.S. 2021, 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 for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The

jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of the offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

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

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

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

4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;

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

6. Sodomy committed upon a student at a secondary school who is concurrently enrolled at an institution of higher education by an employee of the institution of higher education of which the student is enrolled;

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

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

C. "Employee of an institution of higher education", for purposes of this section, means faculty, adjunct faculty, instructors, volunteers, or an employee of a business contracting with an institution of higher education who may exercise, at any time, institutional authority over the victim. Employee of an institution of higher education shall not include an enrolled student who is not more than three (3) years of age or older than the concurrently enrolled student and who is employed or volunteering, in any capacity, for the institution of higher education.

SECTION 2. AMENDATORY 21 O.S. 2021, Section 1111, is amended to read as follows:

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

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

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

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

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

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

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

7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim;

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

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

10. Where the victim is a student at a secondary school, is concurrently enrolled at an institution of higher education, and engages in acts pursuant to this subsection with a perpetrator who is an employee of the institution of higher education of which the victim is enrolled.

B. "Employee of an institution of higher education", for purposes of this section, means faculty, adjunct faculty, instructors, volunteers, or an employee of a business contracting with an institution of higher education who may exercise, at any time, institutional authority over the victim. Employee of an institution of higher education shall not include an enrolled student who is not more than three (3) years of age or older than the concurrently enrolled student and who is employed or volunteering, in any capacity, for the institution of higher education.

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

SECTION 3. AMENDATORY 21 O.S. 2021, Section 1111.1, is amended to read as follows:

Section 1111.1 A. Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person.

B. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is ~~at~~:

1. At least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section of law with a person who is eighteen (18) years of age or older and is an employee of ~~the same a~~ school system, ~~or where the victim is under;~~

2. Under the legal custody or supervision of a state or federal agency, county, municipal or a political subdivision and engages in conduct prohibited by this section of law with a federal, state, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, consent shall not be an element of the crime;

~~C. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is nineteen~~ 3. Nineteen (19) years of age or younger and in the legal custody of a state agency, federal agency or tribal court and engages in conduct prohibited by this section of law with a foster parent or foster parent applicant; or

4. A student at a secondary school, is concurrently enrolled at an institution of higher education, and engages in acts pursuant to this section with a perpetrator who is an employee of the institution of higher education of which the student is enrolled.

C. "Employee of an institution of higher education", for purposes of this section, means faculty, adjunct faculty, instructors, volunteers, or an employee of a business contracting with an institution of higher education who may exercise, at any time, institutional authority over the victim. Employee of an institution of higher education shall not include an enrolled student who is not more than three (3) years of age or older than the concurrently enrolled student and who is employed or volunteering, in any capacity, for the institution of higher education.

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

SECTION 4. AMENDATORY 21 O.S. 2021, Section 1123, is amended to read as follows:

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

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

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

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

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

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

- a. urinate or defecate upon a child under sixteen (16) years of age, or force or require a child to defecate or urinate upon the body or private parts of another, or for the purpose of sexual gratification,
- b. ejaculate upon or in the presence of a child,
- c. cause, expose, force or require a child to look upon the body or private parts of another person,
- d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,

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

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

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

1. Without the consent of that person;

2. When committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of

this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision of this state;

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

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

5. When the victim is a student at a secondary school, is concurrently enrolled at an institution of higher education, and engages in acts pursuant to this subsection with a perpetrator who is an employee of the institution of higher education of which the student is enrolled.

As used in this subsection, "employee of an institution of higher education" means faculty, adjunct faculty, instructors, volunteers, or an employee of a business contracting with an institution of higher education who may exercise, at any time, institutional authority over the victim. Employee of an institution of higher education shall not include an enrolled student who is not more than three (3) years of age or older than the concurrently enrolled student and who is employed or volunteering, in any capacity, for the institution of higher education.

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

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

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

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

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

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

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

SECTION 5. This act shall become effective November 1, 2022.

Passed the House of Representatives the 11th day of May, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 27th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____