

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. 1

COMMITTEE AMENDMENT

(Date)

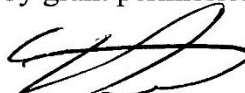
I move to amend House Bill No. 3258, by substituting the attached floor substitute (Request # 1799) for the title, enacting clause and entire body of the measure.

Submitted by:

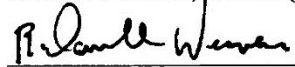


Senator Haste

hereby grant permission for the floor substitute to be adopted.



Senator Paxton, Chair (required)



Senator Weaver



Senator Allen



Senator Bergstrom



Senator Brooks



Senator Coleman

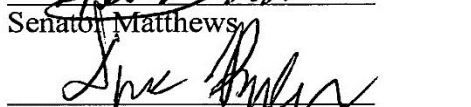
Senator Dahm



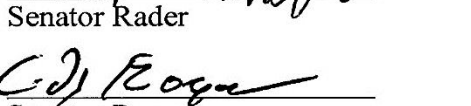
Senator David



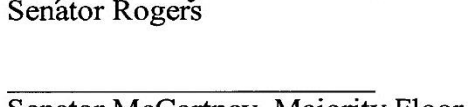
Senator Jech



Senator Matthews



Senator Rader



Senator Rogers

Senator Treat, President Pro Tempore

Senator McCortney, Majority Floor Leader

Note: Public Safety committee majority requires seven (7) members' signatures.

Haste-JES-FA-HB3258
4/12/2022 9:03 AM

Floor Amendments Only) Date and Time Filed: 4-20-22 2:26pm KM

Untimely Amendment Cycle Extended Secondary Amendment

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 3258

By: Nollan of the House

and

Haste of the Senate

7
8
9 FLOOR SUBSTITUTE

10 [sex crimes - penalties for sodomy - lewd or
11 indecent acts or proposals to a child - certain
category of victims - effective date]

12
13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 21 O.S. 2021, Section 888, as
16 amended by Section 2, Chapter 331, O.S.L. 2021, is amended to read
17 as follows:

18 Section 888. A. Any person who forces another person to engage
19 in the detestable and abominable crime against nature, pursuant to
20 Section 886 of this title, upon conviction, is guilty of a felony
21 punishable by imprisonment in the custody of the Department of
22 Corrections for a period of not more than twenty (20) years. Except
23 for persons sentenced to life or life without parole, any person
24 sentenced to imprisonment for two (2) years or more for a violation

1 of this subsection shall be required to serve a term of post-
2 imprisonment supervision pursuant to subparagraph f of paragraph 1
3 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
4 under conditions determined by the Department of Corrections. The
5 jury shall be advised that the mandatory post-imprisonment
6 supervision shall be in addition to the actual imprisonment. Any
7 person convicted of a second violation of this section, where the
8 victim of the second offense is a person under sixteen (16) years of
9 age, shall not be eligible for probation, suspended or deferred
10 sentence. Any person convicted of a third or subsequent violation
11 of this section, where the victim of the third or subsequent offense
12 is a person under sixteen (16) years of age, shall be punished by
13 imprisonment in the custody of the Department of Corrections for a
14 term of life or life without parole, in the discretion of the jury,
15 or in case the jury fails or refuses to fix punishment then the same
16 shall be pronounced by the court. Any person convicted of a
17 violation of this subsection after having been twice convicted of a
18 violation of subsection A of Section 1114 of this title, a violation
19 of Section 1123 of this title or sexual abuse of a child pursuant to
20 Section 843.5 of this title, or of any attempt to commit any of
21 these offenses or any combination of the offenses, shall be punished
22 by imprisonment in the custody of the Department of Corrections for
23 a term of life or life without parole.

24 B. The crime of forcible sodomy shall include:

- 1 1. Sodomy committed by a person over eighteen (18) years of age
2 upon a person under sixteen (16) years of age;
- 3 2. Sodomy committed upon a person incapable through mental
4 illness or any unsoundness of mind of giving legal consent
5 regardless of the age of the person committing the crime;
- 6 3. Sodomy accomplished with any person by means of force,
7 violence, or threats of force or violence accompanied by apparent
8 power of execution regardless of the age of the victim or the person
9 committing the crime;
- 10 4. Sodomy 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 5. Sodomy committed upon a person who is at least sixteen (16)
20 years of age but less than twenty (20) years of age and is a student
21 of any public or private secondary school, junior high or high
22 school, or public vocational school, with a person who is eighteen
23 (18) years of age or older and is employed by ~~the same~~ a school
24 system;

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

5 ~~6.~~ 7. 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.~~ 8. 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 C. "Employee of an institution of higher education" for
13 purposes of this section means faculty, adjunct faculty,
14 instructors, volunteers, or an employee of a business contracting
15 with an institution of higher education, who may exercise, at any
16 time, institutional authority over the victim. Employee of an
17 institution of higher education shall not include an enrolled
18 student who is not more than three (3) years of age or older than
19 the concurrently enrolled student and who is employed or
20 volunteering, in any capacity, for the institution of higher
21 education.

22 SECTION 2. AMENDATORY 21 O.S. 2021, Section 1111, as
23 last amended by Section 3, Chapter 331, O.S.L. 2021, is amended to
24 read as follows:

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

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

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

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

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

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

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

24

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

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

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

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

1 is an employee of the institution of higher education of which the
2 victim is enrolled.

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

12 ~~B.~~ C. 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. 2021, Section 1111.1, is
17 amended to read as follows:

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

23

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Any person convicted of any violation of this subsection shall
19 be punished by imprisonment in the custody of the Department of
20 Corrections for not less than three (3) years nor more than twenty
21 (20) years, except when the child is under twelve (12) years of age
22 at the time the offense is committed, and in such case the person
23 shall, upon conviction, be punished by imprisonment in the custody
24 of the Department of Corrections for not less than twenty-five (25)

1 years. The provisions of this subsection shall not apply unless the
2 accused is at least three (3) years older than the victim, except
3 when accomplished by the use of force or fear. Except as provided
4 in Section 51.1a of this title, any person convicted of a second or
5 subsequent violation of this subsection shall be guilty of a felony
6 punishable as provided in this subsection and shall not be eligible
7 for probation, suspended or deferred sentence. Except as provided
8 in Section 51.1a of this title, any person convicted of a third or
9 subsequent violation of this subsection shall be guilty of a felony
10 punishable by imprisonment in the custody of the Department of
11 Corrections for a term of life or life without parole, in the
12 discretion of the jury, or in case the jury fails or refuses to fix
13 punishment then the same shall be pronounced by the court. Any
14 person convicted of a violation of this subsection after having been
15 twice convicted of a violation of subsection A of Section 1114 of
16 this title, Section 888 of this title, sexual abuse of a child
17 pursuant to Section 843.5 of this title, or of any attempt to commit
18 any of these offenses or any combination of convictions pursuant to
19 these sections shall be punished by imprisonment in the custody of
20 the Department of Corrections for a term of life or life without
21 parole.

22 B. No person shall commit sexual battery on any other person.
23 "Sexual battery" shall mean the intentional touching, mauling or
24

1 feeling of the body or private parts of any person sixteen (16)
2 years of age or older, in a lewd and lascivious manner:

3 1. Without the consent of that person;

4 2. When committed by a state, county, municipal or political
5 subdivision employee or a contractor or an employee of a contractor
6 of the state, a county, a municipality or political subdivision of
7 this state upon a person who is under the legal custody, supervision
8 or authority of a state agency, a county, a municipality or a
9 political subdivision of this state, or the subcontractor or
10 employee of a subcontractor of the contractor of the state or
11 federal government, a county, a municipality or a political
12 subdivision of this state;

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

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

23 5. When the victim is a student at a secondary school, is
24 concurrently enrolled at an institution of higher education, and

1 engages in acts pursuant to this subsection with a perpetrator who
2 is an employee of the institution of higher education of which the
3 student is enrolled.

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

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

24

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

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17 58-2-3799 JES 4/20/2022 3:05:49 PM

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