

1 **SENATE FLOOR VERSION**

2 March 28, 2022

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 3258

6 By: Nollan of the House

7 and

8 Haste of the Senate

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

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

13 SECTION 1. AMENDATORY 21 O.S. 2021, Section 888, is
14 amended to read as follows:

15 Section 888. A. Any person who forces another person to engage
16 in the detestable and abominable crime against nature, pursuant to
17 Section 886 of this title, upon conviction, is guilty of a felony
18 punishable by imprisonment in the custody of the Department of
19 Corrections for a period of not more than twenty (20) years. Except
20 for persons sentenced to life or life without parole, any person
21 sentenced to imprisonment for two (2) years or more for a violation
22 of this subsection shall be required to serve a term of post-
23 imprisonment supervision pursuant to subparagraph f of paragraph 1
24 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes

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

21 B. The crime of forcible sodomy shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 8. Where the victim is at least sixteen (16) years of age and
21 is less than twenty (20) years of age and is a student, or under the
22 legal custody or supervision of any public or private elementary or
23 secondary school, junior high or high school, or public vocational
24 school, and engages in sexual intercourse with a person who is

1 eighteen (18) years of age or older and is an employee of ~~the same a~~
2 school system; ~~or~~

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

7 10. Where the victim is a student at a secondary school but is
8 concurrently enrolled at an institution of higher education and
9 engages in sexual intercourse with a person who is three (3) or more
10 years of age older than the concurrently enrolled student and is an
11 employee of the institution of higher education of which the student
12 is enrolled.

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

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

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

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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 least sixteen (16) years of age and is less than
4 twenty (20) years of age and is a student, or under the legal
5 custody or supervision of any public or private elementary or
6 secondary school, junior high or high school, or public vocational
7 school, and engages in conduct prohibited by this section of law
8 with a person who is eighteen (18) years of age or older and is an
9 employee of ~~the same~~ a school system, or where the victim is under
10 the legal custody or supervision of a state or federal agency,
11 county, municipal or a political subdivision and engages in conduct
12 prohibited by this section of law with a federal, state, county,
13 municipal or political subdivision employee or an employee of a
14 contractor of the state, the federal government, a county, a
15 municipality or a political subdivision that exercises authority
16 over the victim, consent shall not be an element of the crime.

17 C. Provided, further, that at least one of the circumstances
18 specified in Section 1111 of this title has been met; further, where
19 the victim is nineteen (19) years of age or younger and in the legal
20 custody of a state agency, federal agency or tribal court and
21 engages in conduct prohibited by this section of law with a foster
22 parent or foster parent applicant or where the victim is a student
23 at a secondary school but is concurrently enrolled at an institution
24 of higher education and engages in **conduct prohibited by this**

1 section of law with a person who is three (3) or more years of age
2 older than the concurrently enrolled student and is an employee of
3 the institution of higher education of which the student is
4 enrolled.

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

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

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

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

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

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

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

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

16 a. urinate or defecate upon a child under sixteen (16)
17 years of age, or force or require a child to defecate
18 or urinate upon the body or private parts of another,
19 or for the purpose of sexual gratification,

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~~ a 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; or

13 5. When committed upon a person who is a student at a secondary
14 school but is concurrently enrolled at an institution of higher
15 education **by** a person who is three (3) or more years of age older
16 than the concurrently enrolled student and is an employee of the
17 institution of higher education of which the student is enrolled.

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

22 C. No person shall in any manner lewdly or lasciviously:
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1 1. Look upon, touch, maul, or feel the body or private parts of
2 any human corpse in any indecent manner relating to sexual matters
3 or sexual interest; or

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

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

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

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
23 March 28, 2022 - DO PASS AS AMENDED

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