

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 2398

By: Biggs, Tadlock, Sanders and  
Jordan of the House

7 and

8 Griffin and Brooks of the  
9 Senate

10  
11 CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to crimes and punishments; creating  
13 the Justice for J.W. Act of 2016; defining terms;  
14 directing the Oklahoma Court of Criminal Appeals to  
15 publish certain jury instructions; amending 21 O.S.  
16 2011, Section 888, which relates to forcible sodomy;  
17 expanding scope of crime; providing for codification;  
18 providing for noncodification; and declaring an  
19 emergency.

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

21 SECTION 1. NEW LAW A new section of law not to be  
22 codified in the Oklahoma Statutes reads as follows:

23 This act shall be known and may be cited as the "Justice for  
24 J.W. Act of 2016".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 111 of Title 21, unless there is  
3 created a duplication in numbering, reads as follows:

4 A. In all instances of sexual assault including, but not  
5 limited to, rape, rape by instrumentation and forcible sodomy where  
6 force is alleged, the term "force" shall mean any force, no matter  
7 how slight, necessary to accomplish the act without the consent of  
8 the victim. The force necessary to constitute an element need not  
9 be actual physical force since fear, fright or coercion may take the  
10 place of actual physical force.

11 B. The Oklahoma Court of Criminal Appeals is requested and  
12 authorized to proceed to prescribe, institute and publish within ten  
13 (10) days of the effective date of this act a uniform instruction to  
14 be given in jury trials of criminal cases that defines the term  
15 "force" consistent with the definition provided for in subsection A  
16 of this section.

17 SECTION 3. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 112 of Title 21, unless there is  
19 created a duplication in numbering, reads as follows:

20 The term "sexual assault" is any type of sexual contact or  
21 behavior that occurs without explicit consent of the recipient  
22 including, but not limited to, forced sexual intercourse, forcible  
23 sodomy, child molestation, child sexual abuse, incest, fondling and  
24 all attempts to complete any of the aforementioned acts.

1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 113 of Title 21, unless there is  
3 created a duplication in numbering, reads as follows:

4 The term "consent" means the affirmative, unambiguous and  
5 voluntary agreement to engage in a specific sexual activity during a  
6 sexual encounter which can be revoked at any time. Consent cannot  
7 be:

8 1. Given by an individual who:

9 a. is asleep or is mentally or physically incapacitated  
10 either through the effect of drugs or alcohol or for  
11 any other reason, or

12 b. is under duress, threat, coercion or force; or

13 2. Inferred under circumstances in which consent is not clear  
14 including, but not limited to:

15 a. the absence of an individual saying "no" or "stop", or

16 b. the existence of a prior or current relationship or  
17 sexual activity.

18 SECTION 5. AMENDATORY 21 O.S. 2011, Section 888, is  
19 amended to read as follows:

20 Section 888. A. Any person who forces another person to engage  
21 in the detestable and abominable crime against nature, pursuant to  
22 Section 886 of this title, upon conviction, is guilty of a felony  
23 punishable by imprisonment in the custody of the Department of  
24 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 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; ~~or~~

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; ~~or~~

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; ~~or~~

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~~

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 school  
24 system;

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 6. It being immediately necessary for the preservation  
9 of the public peace, health and safety, an emergency is hereby  
10 declared to exist, by reason whereof this act shall take effect and  
11 be in full force from and after its passage and approval.

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13       55-2-9907           GRS       05/03/16

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