

1 **SENATE FLOOR VERSION**

2 April 5, 2021

3 ENGROSSED HOUSE
4 BILL NO. 2515

By: Stinson, Sims and Moore of
the House

5 and

6 Daniels of the Senate

7
8
9 An Act relating to crimes and punishments; amending
10 21 O.S. 2011, Section 843.5, as last amended by
11 Section 1, Chapter 284, O.S.L. 2019 (21 O.S. Supp.
12 2020, Section 843.5), which relates to penalties for
13 child abuse and neglect; modifying scope of certain
14 prohibited acts; deleting defined terms; precluding
15 the use of certain defense in criminal prosecutions;
16 declaring age requirement; defining terms; amending
17 21 O.S. 2011, Section 888, as last amended by Section
18 2, Chapter 167, O.S.L. 2018 (21 O.S. Supp. 2020,
19 Section 888), which relates to penalties for forcible
20 sodomy; deleting certain circumstance that determines
21 the crime of forcible sodomy; deleting defined term;
22 amending 21 O.S. 2011, Section 1111, as last amended
23 by Section 3, Chapter 167, O.S.L. 2018 (21 O.S. Supp.
24 2020, Section 1111), which relates to the crime of
rape; deleting certain circumstance that determines
the crime of rape; deleting defined term; amending 21
O.S. 2011, Section 1123, as last amended by Section
4, Chapter 167, O.S.L. 2018 (21 O.S. Supp. 2020,
Section 1123), which relates to penalties for lewd or
indecent acts to a child; deleting certain prohibited
act and related penalties; deleting defined term; and
providing an effective date.

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

1 SECTION 1. AMENDATORY 21 O.S. 2011, Section 843.5, as
2 last amended by Section 1, Chapter 284, O.S.L. 2019 (21 O.S. Supp.
3 2020, Section 843.5), is amended to read as follows:

4 Section 843.5. A. Any ~~parent or other~~ person who shall
5 willfully or maliciously engage in child abuse, as defined in this
6 section, shall, upon conviction, be guilty of a felony punishable by
7 imprisonment in the custody of the Department of Corrections not
8 exceeding life imprisonment, or by imprisonment in a county jail not
9 exceeding one (1) year, or by a fine of not less than Five Hundred
10 Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00),
11 or both such fine and imprisonment. ~~As used in this subsection,~~
12 ~~"child abuse" means the willful or malicious harm or threatened harm~~
13 ~~or failure to protect from harm or threatened harm to the health,~~
14 ~~safety, or welfare of a child under eighteen (18) years of age by~~
15 ~~another, or the act of willfully or maliciously injuring, torturing~~
16 ~~or maiming a child under eighteen (18) years of age by another.~~

17 B. Any ~~parent or other~~ person responsible for the health,
18 safety or welfare of a child who shall willfully or maliciously
19 engage in enabling child abuse, as defined in this section, shall,
20 upon conviction, be punished by imprisonment in the custody of the
21 Department of Corrections not exceeding life imprisonment, or by
22 imprisonment in a county jail not exceeding one (1) year, or by a
23 fine of not less than Five Hundred Dollars (\$500.00) nor more than
24 Five Thousand Dollars (\$5,000.00) or both such fine and

1 imprisonment. ~~As used in this subsection, "enabling child abuse"~~
2 ~~means the causing, procuring or permitting of a willful or malicious~~
3 ~~act of harm or threatened harm or failure to protect from harm or~~
4 ~~threatened harm to the health, safety, or welfare of a child under~~
5 ~~eighteen (18) years of age by another. As used in this subsection,~~
6 ~~"permit" means to authorize or allow for the care of a child by an~~
7 ~~individual when the person authorizing or allowing such care knows~~
8 ~~or reasonably should know that the child will be placed at risk of~~
9 ~~abuse as proscribed by this subsection.~~

10 C. Any ~~parent or other person~~ responsible for the health,
11 safety or welfare of a child who shall willfully or maliciously
12 engage in child neglect, as defined in this section, shall, upon
13 conviction, be punished by imprisonment in the custody of the
14 Department of Corrections not exceeding life imprisonment, or by
15 imprisonment in a county jail not exceeding one (1) year, or by a
16 fine of not less than Five Hundred Dollars (\$500.00) nor more than
17 Five Thousand Dollars (\$5,000.00), or both such fine and
18 imprisonment. ~~As used in this subsection, "child neglect" means the~~
19 ~~willful or malicious neglect, as defined by Section 1-1-105 of Title~~
20 ~~10A of the Oklahoma Statutes, of a child under eighteen (18) years~~
21 ~~of age by another.~~

22 D. Any parent or other person who shall willfully or
23 maliciously engage in enabling child neglect shall, upon conviction,
24 be punished by imprisonment in the custody of the Department of

1 Corrections not exceeding life imprisonment, or by imprisonment in a
2 county jail not exceeding one (1) year, or by a fine of not less
3 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
4 Dollars (\$5,000.00), or both such fine and imprisonment. ~~As used in~~
5 ~~this subsection, "enabling child neglect" means the causing,~~
6 ~~procuring or permitting of a willful or malicious act of child~~
7 ~~neglect, as defined by Section 1-1-105 of Title 10A of the Oklahoma~~
8 ~~Statutes, of a child under eighteen (18) years of age by another.~~
9 ~~As used in this subsection, "permit" means to authorize or allow for~~
10 ~~the care of a child by an individual when the person authorizing or~~
11 ~~allowing such care knows or reasonably should know that the child~~
12 ~~will be placed at risk of neglect as proscribed by this subsection.~~

13 E. Any ~~parent or other person~~ responsible for the health,
14 safety or welfare of a child who shall willfully or maliciously
15 engage in child sexual abuse, as defined in this section, shall,
16 upon conviction, be punished by imprisonment in the custody of the
17 Department of Corrections not exceeding life imprisonment, or by
18 imprisonment in a county jail not exceeding one (1) year, or by a
19 fine of not less than Five Hundred Dollars (\$500.00) nor more than
20 Five Thousand Dollars (\$5,000.00), or both such fine and
21 imprisonment, except as provided in Section 51.1a of this title or
22 as otherwise provided in subsection F of this section for a child
23 victim under twelve (12) years of age. Except for persons sentenced
24 to life or life without parole, any person sentenced to imprisonment

1 for two (2) years or more for a violation of this subsection shall
2 be required to serve a term of post-imprisonment supervision
3 pursuant to subparagraph f of paragraph 1 of subsection A of Section
4 991a of Title 22 of the Oklahoma Statutes under conditions
5 determined by the Department of Corrections. The jury shall be
6 advised that the mandatory post-imprisonment supervision shall be in
7 addition to the actual imprisonment. ~~As used in this section,~~
8 ~~"child sexual abuse" means the willful or malicious sexual abuse,~~
9 ~~which includes but is not limited to rape, incest, and lewd or~~
10 ~~indecent acts or proposals, of a child under eighteen (18) years of~~
11 ~~age by another.~~

12 F. Any ~~parent or other~~ person responsible for the health,
13 safety or welfare of a child who shall willfully or maliciously
14 engage in child sexual abuse, as defined in this section, to a child
15 under twelve (12) years of age shall, upon conviction, be punished
16 by imprisonment in the custody of the Department of Corrections for
17 not less than twenty-five (25) years nor more than life
18 imprisonment, and by a fine of not less than Five Hundred Dollars
19 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

20 G. Any parent or other person who shall willfully or
21 maliciously engage in enabling child sexual abuse shall, upon
22 conviction, be punished by imprisonment in the custody of the
23 Department of Corrections not exceeding life imprisonment, or by
24 imprisonment in a county jail not exceeding one (1) year, or by a

1 fine of not less than Five Hundred Dollars (\$500.00) nor more than
2 Five Thousand Dollars (\$5,000.00), or both such fine and
3 imprisonment. ~~As used in this subsection, "enabling child sexual~~
4 ~~abuse" means the causing, procuring or permitting of a willful or~~
5 ~~malicious act of child sexual abuse, which includes but is not~~
6 ~~limited to rape, incest, and lewd or indecent acts or proposals, of~~
7 ~~a child under the age of eighteen (18) by another. As used in this~~
8 ~~subsection, "permit" means to authorize or allow for the care of a~~
9 ~~child by an individual when the person authorizing or allowing such~~
10 ~~care knows or reasonably should know that the child will be placed~~
11 ~~at risk of sexual abuse as proscribed by this subsection.~~

12 H. Any ~~parent or other~~ person who shall willfully or
13 maliciously engage in child sexual exploitation, as defined in this
14 section, shall, upon conviction, be punished by imprisonment in the
15 custody of the Department of Corrections not exceeding life
16 imprisonment, or by imprisonment in a county jail not exceeding one
17 (1) year, or by a fine of not less than Five Hundred Dollars
18 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
19 such fine and imprisonment except as provided in subsection I of
20 this section for a child victim under twelve (12) years of age.
21 Except for persons sentenced to life or life without parole, any
22 person sentenced to imprisonment for two (2) years or more for a
23 violation of this subsection shall be required to serve a term of
24 post-imprisonment supervision pursuant to subparagraph f of

1 paragraph 1 of subsection A of Section 991a of Title 22 of the
2 Oklahoma Statutes under conditions determined by the Department of
3 Corrections. The jury shall be advised that the mandatory post-
4 imprisonment supervision shall be in addition to the actual
5 imprisonment. ~~As used in this subsection, "child sexual~~
6 ~~exploitation" means the willful or malicious sexual exploitation,~~
7 ~~which includes but is not limited to allowing, permitting, or~~
8 ~~encouraging a child under eighteen (18) years of age to engage in~~
9 ~~prostitution or allowing, permitting, encouraging or engaging in the~~
10 ~~lewd, obscene or pornographic photographing, filming, or depicting~~
11 ~~of a child under eighteen (18) years of age by another.~~

12 I. Any ~~parent or other~~ person who shall willfully or
13 maliciously engage in child sexual exploitation, as defined in this
14 section, of a child under twelve (12) years of age shall, upon
15 conviction, be punished by imprisonment in the custody of the
16 Department of Corrections for not less than twenty-five (25) years
17 nor more than life imprisonment, and by a fine of not less than Five
18 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
19 (\$5,000.00).

20 J. Any ~~parent or other~~ person responsible for the health,
21 safety or welfare of a child who shall willfully or maliciously
22 engage in enabling child sexual exploitation, as defined in this
23 section, shall, upon conviction, be punished by imprisonment in the
24 custody of the Department of Corrections not exceeding life

1 imprisonment, or by imprisonment in a county jail not exceeding one
2 (1) year, or by a fine of not less than Five Hundred Dollars
3 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
4 such fine and imprisonment. ~~As used in this subsection, "enabling~~
5 ~~child sexual exploitation" means the causing, procuring or~~
6 ~~permitting of a willful or malicious act of child sexual~~
7 ~~exploitation, which includes but is not limited to allowing,~~
8 ~~permitting, or encouraging a child under eighteen (18) years of age~~
9 ~~to engage in prostitution or allowing, permitting, encouraging or~~
10 ~~engaging in the lewd, obscene or pornographic photographing,~~
11 ~~filming, or depicting of a child under eighteen (18) years of age by~~
12 ~~another. As used in this subsection, "permit" means to authorize or~~
13 ~~allow for the care of a child by an individual when the person~~
14 ~~authorizing or allowing such care knows or reasonably should know~~
15 ~~that the child will be placed at risk of sexual exploitation as~~
16 ~~proscribed by this subsection.~~

17 K. Notwithstanding any other provision of law, any ~~parent or~~
18 ~~other~~ person convicted of forcible anal or oral sodomy, rape, rape
19 by instrumentation, or lewd molestation of a child under fourteen
20 (14) years of age subsequent to a previous conviction for any
21 offense of forcible anal or oral sodomy, rape, rape by
22 instrumentation, or lewd molestation of a child under fourteen (14)
23 years of age shall be punished by death or by imprisonment for life
24 without parole.

1 L. Provided, however, that nothing contained in this section
2 shall prohibit any parent or guardian from using reasonable and
3 ordinary force pursuant to Section 844 of this title.

4 M. Consent shall not be a defense for any violation provided
5 for in this section.

6 N. Notwithstanding the age requirements of other statutes
7 referenced within this section, this section shall apply to any
8 child under eighteen (18) years of age.

9 O. As used in this section:

10 1. "Child abuse" means:

11 a. the willful or malicious harm or threatened harm or
12 failure to protect from harm or threatened harm to the
13 health, safety or welfare of a child under eighteen
14 (18) years of age by a person responsible for a
15 child's health, safety or welfare, or

16 b. the act of willfully or maliciously injuring,
17 torturing or maiming a child under eighteen (18) years
18 of age by any person;

19 2. "Child neglect" means the willful or malicious neglect, as
20 defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes, of
21 a child under eighteen (18) years of age by a person responsible for
22 a child's health, safety or welfare;

23 3. "Child sexual abuse" means the willful or malicious sexual
24 abuse of a child under eighteen (18) years of age by a person

1 responsible for a child's health, safety or welfare and includes,
2 but is not limited to:

- 3 a. sexual intercourse,
- 4 b. penetration of the vagina or anus, however slight, by
5 an inanimate object or any part of the human body not
6 amounting to sexual intercourse,
- 7 c. sodomy,
- 8 d. incest, or
- 9 e. a lewd act or proposal, as defined in this section;

10 4. "Child sexual exploitation" means the willful or malicious
11 sexual exploitation of a child under eighteen (18) years of age by
12 another and includes, but is not limited to:

- 13 a. human trafficking, as provided for in Section 748 of
14 this title, if the offense involved child trafficking
15 for commercial sex,
- 16 b. trafficking in children, as provided for in Section
17 866 of this title, if the offense was committed for
18 the sexual gratification of any person,
- 19 c. procuring or causing the participation of a minor in
20 child pornography, as provided for in Section 1021.2
21 of this title,
- 22 d. purchase, procurement or possession of child
23 pornography, as provided for in Section 1024.2 of this
24 title,

- 1 e. engaging in or soliciting prostitution, as provided
2 for in Section 1029 of this title, if the offense
3 involved child prostitution,
- 4 f. publication, distribution or participation in the
5 preparation of obscene material, as provided for in
6 Section 1040.8 of this title, if the offense involved
7 child pornography,
- 8 g. aggravated possession of child pornography, as
9 provided for in Section 1040.12a of this title,
- 10 h. sale or distribution of obscene material, as provided
11 for in Section 1040.13 of this title,
- 12 i. soliciting sexual conduct or communication with a
13 minor by use of technology, as provided for in Section
14 1043.13a of this title,
- 15 j. offering or transporting a child for purposes of
16 prostitution, as provided for in Section 1087 of this
17 title, and
- 18 k. child prostitution, as provided for in Section 1088 of
19 this title;

20 5. "Enabling child abuse" means the causing, procuring or
21 permitting of child abuse by a person responsible for a child's
22 health, safety or welfare;

23

24

1 6. "Enabling child neglect" means the causing, procuring or
2 permitting of child neglect by a person responsible for a child's
3 health, safety or welfare;

4 7. "Enabling child sexual abuse" means the causing, procuring
5 or permitting of child sexual abuse by a person responsible for a
6 child's health, safety or welfare;

7 8. "Enabling child sexual exploitation" means the causing,
8 procuring or permitting of child sexual exploitation by a person
9 responsible for a child's health, safety or welfare;

10 9. "Incest" means marrying, committing adultery or fornicating
11 with a child by a person responsible for the health, safety or
12 welfare of a child;

13 10. "Lewd act or proposal" means:

14 a. making any oral, written or electronic or computer-
15 generated lewd or indecent proposal to a child for the
16 child to have unlawful sexual relations or sexual
17 intercourse with any person,

18 b. looking upon, touching, mauling or feeling the body or
19 private parts of a child in a lewd or lascivious
20 manner or for the purpose of sexual gratification,

21 c. asking, inviting, enticing or persuading any child to
22 go alone with any person to a secluded, remote or
23 secret place for a lewd or lascivious purpose,

1 d. urinating or defecating upon a child or causing,
2 forcing or requiring a child to defecate or urinate
3 upon the body or private parts of another person for
4 the purpose of sexual gratification,

5 e. ejaculating upon or in the presence of a child,

6 f. causing, exposing, forcing or requiring a child to
7 look upon the body or private parts of another person
8 for the purpose of sexual gratification,

9 g. causing, forcing or requiring any child to view any
10 obscene materials, child pornography or materials
11 deemed harmful to minors as such terms are defined in
12 Sections 1024.1 and 1040.75 of this title,

13 h. causing, exposing, forcing or requiring a child to
14 look upon sexual acts performed in the presence of the
15 child for the purpose of sexual gratification, or

16 i. causing, forcing or requiring a child to touch or feel
17 the body or private parts of the child or another
18 person for the purpose of sexual gratification;

19 11. "Permit" means to authorize or allow for the care of a
20 child by an individual when the person authorizing or allowing such
21 care knows or reasonably should know that the child will be placed
22 at risk of the conduct or harm proscribed by this section;

1 12. "Person responsible for a child's health, safety or
2 welfare" for purposes of this section shall include, but not be
3 limited to:

- 4 a. the parent of the child,
5 b. the legal guardian of the child,
6 c. the custodian of the child,
7 d. the foster parent of the child,
8 e. a person eighteen (18) years of age or older with whom
9 the parent of the child cohabitates, who is at least
10 three (3) years older than the child,
11 f. any other person eighteen (18) years of age or older
12 residing in the home of the child who is at least
13 three (3) years older than the child,
14 g. an owner, operator, agent, employee or volunteer of a
15 public or private residential home, institution,
16 facility or day treatment program, as defined in
17 Section 175.20 of Title 10 of the Oklahoma Statutes,
18 that the child attended,
19 h. an owner, operator, agent, employee or volunteer of a
20 child care facility, as defined in Section 402 of
21 Title 10 of the Oklahoma Statutes, that the child
22 attended,

1 i. an intimate partner of the parent of the child, as
2 defined in Section 60.1 of Title 22 of the Oklahoma
3 Statutes, or

4 j. a person who has voluntarily accepted responsibility
5 for the care or supervision of a child;

6 13. "Sexual intercourse" means the actual penetration, however
7 slight, of the vagina or anus by the penis; and

8 14. "Sodomy" means:

9 a. penetration, however slight, of the mouth of the child
10 by a penis,

11 b. penetration, however slight, of the vagina of a person
12 responsible for a child's health, safety or welfare,
13 by the mouth of a child,

14 c. penetration, however slight, of the mouth of the
15 person responsible for a child's health, safety or
16 welfare by the penis of the child, or

17 d. penetration, however slight, of the vagina of the
18 child by the mouth of the person responsible for a
19 child's health, safety or welfare.

20 SECTION 2. AMENDATORY 21 O.S. 2011, Section 888, as last
21 amended by Section 2, Chapter 167, O.S.L. 2018 (21 O.S. Supp. 2020,
22 Section 888), is amended to read as follows:

23 Section 888. A. Any person who forces another person to engage
24 in the detestable and abominable crime against nature, pursuant to

1 Section 886 of this title, upon conviction, is guilty of a felony
2 punishable by imprisonment in the custody of the Department of
3 Corrections for a period of not more than twenty (20) years. Except
4 for persons sentenced to life or life without parole, any person
5 sentenced to imprisonment for two (2) years or more for a violation
6 of this subsection shall be required to serve a term of post-
7 imprisonment supervision pursuant to subparagraph f of paragraph 1
8 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
9 under conditions determined by the Department of Corrections. The
10 jury shall be advised that the mandatory post-imprisonment
11 supervision shall be in addition to the actual imprisonment. Any
12 person convicted of a second violation of this section, where the
13 victim of the second offense is a person under sixteen (16) years of
14 age, shall not be eligible for probation, suspended or deferred
15 sentence. Any person convicted of a third or subsequent violation
16 of this section, where the victim of the third or subsequent offense
17 is a person under sixteen (16) years of age, shall be punished by
18 imprisonment in the custody of the Department of Corrections for a
19 term of life or life without parole, in the discretion of the jury,
20 or in case the jury fails or refuses to fix punishment then the same
21 shall be pronounced by the court. Any person convicted of a
22 violation of this subsection after having been twice convicted of a
23 violation of subsection A of Section 1114 of this title, a violation
24 of Section 1123 of this title or sexual abuse of a child pursuant to

1 Section 843.5 of this title, or of any attempt to commit any of
2 these offenses or any combination of the offenses, shall be punished
3 by imprisonment in the custody of the Department of Corrections for
4 a term of life or life without parole.

5 B. The crime of forcible sodomy shall include:

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

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

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

15 4. Sodomy committed by a state, county, municipal or political
16 subdivision employee or a contractor or an employee of a contractor
17 of the state, a county, a municipality or political subdivision of
18 this state upon a person who is under the legal custody, supervision
19 or authority of a state agency, a county, a municipality or a
20 political subdivision of this state, or the subcontractor or
21 employee of a subcontractor of the contractor of the state or
22 federal government, a county, a municipality or a political
23 subdivision of this state;

24

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

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

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

14 ~~8. Sodomy committed upon a person who is at least sixteen (16)~~
15 ~~years of age but less than eighteen (18) years of age by a person~~
16 ~~responsible for the child's health, safety or welfare. "Person~~
17 ~~responsible for a child's health, safety or welfare" shall include,~~
18 ~~but not be limited to:~~

- 19 a. ~~a parent,~~
- 20 b. ~~a legal guardian,~~
- 21 c. ~~eustodian,~~
- 22 d. ~~a foster parent,~~
- 23 e. ~~a person eighteen (18) years of age or older with whom~~
24 ~~the child's parent cohabitates,~~

- 1 ~~f. any other adult residing in the home of the child,~~
2 ~~g. an agent or employee of a public or private~~
3 ~~residential home, institution, facility or day~~
4 ~~treatment program as defined in Section 175.20 of~~
5 ~~Title 10 of the Oklahoma Statutes, or~~
6 ~~h. an owner, operator or employee of a child care~~
7 ~~facility, as defined by Section 402 of Title 10 of the~~
8 ~~Oklahoma Statutes.~~

9 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1111, as
10 last amended by Section 3, Chapter 167, O.S.L. 2018 (21 O.S. Supp.
11 2020, Section 1111), is amended to read as follows:

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

- 17 1. Where the victim is under sixteen (16) years of age;
18 2. Where the victim is incapable through mental illness or any
19 other unsoundness of mind, whether temporary or permanent, of giving
20 legal consent;
21 3. Where force or violence is used or threatened, accompanied
22 by apparent power of execution to the victim or to another person;

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

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

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

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

23 8. Where the victim is at least sixteen (16) years of age and
24 is less than twenty (20) years of age and is a student, or under the

1 legal custody or supervision of any public or private elementary or
2 secondary school, junior high or high school, or public vocational
3 school, and engages in sexual intercourse with a person who is
4 eighteen (18) years of age or older and is an employee of the same
5 school system; or

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

10 ~~10. Where the victim is at least sixteen (16) years of age but~~
11 ~~less than eighteen (18) years of age and the perpetrator of the~~
12 ~~crime is a person responsible for the child's health, safety or~~
13 ~~welfare. "Person responsible for a child's health, safety or~~
14 ~~welfare" shall include, but not be limited to:~~

- 15 a. ~~a parent,~~
- 16 b. ~~a legal guardian,~~
- 17 c. ~~custodian,~~
- 18 d. ~~a foster parent,~~
- 19 e. ~~a person eighteen (18) years of age or older with whom~~
20 ~~the child's parent cohabitates,~~
- 21 f. ~~any other adult residing in the home of the child,~~
- 22 g. ~~an agent or employee of a public or private~~
23 ~~residential home, institution, facility or day~~

24

1 ~~treatment program as defined in Section 175.20 of~~
2 ~~Title 10 of the Oklahoma Statutes, or~~

3 ~~h. an owner, operator or employee of a child care~~
4 ~~facility, as defined by Section 402 of Title 10 of the~~
5 ~~Oklahoma Statutes.~~

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

10 SECTION 4. AMENDATORY 21 O.S. 2011, Section 1123, as
11 last amended by Section 4, Chapter 167, O.S.L. 2018 (21 O.S. Supp.
12 2020, Section 1123), is amended to read as follows:

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

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

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

24

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

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

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

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

18 b. ejaculate upon or in the presence of a child,

19 c. cause, expose, force or require a child to look upon
20 the body or private parts of another person,

21 d. force or require any child under sixteen (16) years of
22 age or other individual the person believes to be a
23 child under sixteen (16) years of age, to view any
24 obscene materials, child pornography or materials

1 deemed harmful to minors as such terms are defined by
2 Sections 1024.1 and 1040.75 of this title,

3 e. cause, expose, force or require a child to look upon
4 sexual acts performed in the presence of the child, or

5 f. force or require a child to touch or feel the body or
6 private parts of the child or another person.

7 Any person convicted of any violation of this subsection shall
8 be punished by imprisonment in the custody of the Department of
9 Corrections for not less than three (3) years nor more than twenty
10 (20) years, except when the child is under twelve (12) years of age
11 at the time the offense is committed, and in such case the person
12 shall, upon conviction, be punished by imprisonment in the custody
13 of the Department of Corrections for not less than twenty-five (25)
14 years. The provisions of this subsection shall not apply unless the
15 accused is at least three (3) years older than the victim, except
16 when accomplished by the use of force or fear. Except as provided
17 in Section 51.1a of this title, any person convicted of a second or
18 subsequent violation of this subsection shall be guilty of a felony
19 punishable as provided in this subsection and shall not be eligible
20 for probation, suspended or deferred sentence. Except as provided
21 in Section 51.1a of this title, any person convicted of a third or
22 subsequent violation of this subsection shall be guilty of a felony
23 punishable by imprisonment in the custody of the Department of
24 Corrections for a term of life or life without parole, in the

1 discretion of the jury, or in case the jury fails or refuses to fix
2 punishment then the same shall be pronounced by the court. Any
3 person convicted of a violation of this subsection after having been
4 twice convicted of a violation of subsection A of Section 1114 of
5 this title, Section 888 of this title, sexual abuse of a child
6 pursuant to Section 843.5 of this title, or of any attempt to commit
7 any of these offenses or any combination of convictions pursuant to
8 these sections shall be punished by imprisonment in the custody of
9 the Department of Corrections for a term of life or life without
10 parole.

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

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

15 1. Without the consent of that person;

16 2. When committed by a state, county, municipal or political
17 subdivision employee or a contractor or an employee of a contractor
18 of the state, a county, a municipality or political subdivision of
19 this state upon a person who is under the legal custody, supervision
20 or authority of a state agency, a county, a municipality or a
21 political subdivision of this state, or the subcontractor or
22 employee of a subcontractor of the contractor of the state or
23 federal government, a county, a municipality or a political
24 subdivision of this state;

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

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

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

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

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

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

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

24

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

5 F. 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 ~~G. Any parent or person responsible for the child's health,
14 safety or welfare who violates subsection A, B or C of this section
15 when the victim is at least sixteen (16) years of age but less than
16 eighteen (18) years of age, upon conviction, shall be guilty of a
17 felony and shall be punished by imprisonment in the custody of the
18 Department of Corrections for not more than ten (10) years. For
19 purposes of this section, "person responsible for a child's health,
20 safety or welfare" shall include, but not be limited to:~~

- 21 a. ~~a parent,~~
- 22 b. ~~a legal guardian,~~
- 23 c. ~~eustodian,~~
- 24 d. ~~a foster parent,~~

- 1 e. ~~a person eighteen (18) years of age or older with whom~~
2 ~~the child's parent cohabitates,~~
3 f. ~~any other adult residing in the home of the child,~~
4 g. ~~an agent or employee of a public or private~~
5 ~~residential home, institution, facility or day~~
6 ~~treatment program as defined in Section 175.20 of~~
7 ~~Title 10 of the Oklahoma Statutes, or~~
8 h. ~~an owner, operator or employee of a child care~~
9 ~~facility, as defined by Section 402 of Title 10 of the~~
10 ~~Oklahoma Statutes.~~

11 SECTION 5. This act shall become effective November 1, 2021.

12 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
13 April 5, 2021 - DO PASS