An Act

ENROLLED HOUSE
BILL NO. 2398

By: Biggs, Tadlock, Sanders, Jordan, Murdock, Virgin, Montgomery, Walker, Roberts (Dustin), Munson, Osborn, Perryman, Hall, Hoskin, Cockroft and Lepak of the House

and

Griffin, Brooks, Holt, Loveless, Floyd and Dossett of the Senate

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

SUBJECT: Sexual assault

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

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

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

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

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

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

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

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

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

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

1. Given by an individual who:

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

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

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

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

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

SECTION 5. AMENDATORY 21 O.S. 2011, 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 said 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; ~~or~~

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; ~~or~~

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; ~~or~~

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~~

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 school system;

6. 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. 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.

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

Passed the House of Representatives the 18th day of May, 2016.

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of May, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd

day of May, 2016, at 12:02 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 6th

day of June, 2016, at 3:27 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 6th

day of June, 2016, at 4:53 o'clock P. M.

By: Chris Benge