

# SEX CRIMES CHEAT SHEET 2022

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## OKLAHOMA SEX CRIMES

CRIME CHARGED	STATUTE	PUNISHMENT RANGE
<b>GENERAL SEX CRIMES</b>		
Rape 1st Degree	21 O.S. 1111, 1114-1115	5 yrs - Life (or Death) no probation for subsequent §1114 <b>85% + registration</b>
Rape 2d Degree (Statutory Rape & Rape by Instrumentation)	21 O.S. 1111.1, 1114, 1116	1 yr - 15 years <b>+ registration</b>
Romeo & Juliet (14-18 yrs old)	21 O.S. 1112-1113	Defense to rape crimes
Sodomy (oral or anal) or Crime Against Nature/Bestiality	21 O.S. 886	0 - 10 years; higher if priors <b>+ registration</b>
Forcible Sodomy (oral or anal) & Crime Against Nature/Bestiality	21 O.S. 888	0 - 20 years; higher if priors <b>85% + registration</b>
Human Trafficking	21 O.S. 748	5-life and up to \$100k; <b>85%</b> If victim under 18, then 15-life and up to \$250k <b>must register if it involved commercial sex acts.</b>
Sexual Battery	21 O.S. 1123(B)	0-10 yrs + <b>registration</b>
Assault with Intent to Commit a Felony	21 O.S. 681	0-1 yr and \$500 0-5 years <b>must register if it involved sexual assault. Be carefull with this compromise.</b>
Kidnapping	21 O.S. 741	0-20 years <b>must register if it involved sexual exploitation.</b>
Kidnapping of a Child if sexual exploitation	21 O.S. 891	0-10 years <b>must register if it involved sexual exploitation.</b>

Indecent Exposure ( <i>consider public urination</i> )	21 O.S. 1021 43A O.S. 10-103	30 days to 10 years + <b>registration</b>
Peeping Tom	21 O.S. 1171	0-1 year; 0-5 years with photos or recording. <b>NO registration.</b>
Obscenity, Threats, or Harassment/Stalking & Obscene Phone Calls	21 O.S. 1172, 1173	0-1 year; 0-5 years; 0-10 years; <b>NO registration</b>
Acts Resulting in Gross Injury (Outraging Public Decency & Public Urination)	21 O.S. 22	0-1 yr; <b>but NO registration</b>
<b>SEX CRIMES WITH CHILDREN</b>		
Rape 1st Degree includes Rape by Instrumentation <i>under Age 14</i>	21 O.S. 1111.1 and 1114	5- Life <b>85% + registration</b>
Rape 2nd Degree (Rape by Instrumentation)	21 O.S. 1111.1 and 1116	1-15 years generally + <b>registration</b>
Child Sex Abuse & Enabling Child Sex Abuse & Child Sexual Exploitation	21 O.S. 843.5 57 O.S. 593 Mary Rippy	0 - Life or alternative 0 - 1 yr in County <b>85% + registration</b> + <b>Mary Rippy registration</b>
Child Sex Abuse & Enabling & Child Sexual Exploitation – <i>Victim under age 12</i>	21 O.S. 843.5 57 O.S. 593 Mary Rippy	25 yrs - Life <b>85% + registration</b> + <b>Mary Rippy registration</b>
Procuring a child for lewd acts	21 O.S. 1087	1 to 10 years + <b>registration</b>
Allowing procurement of a child for lewd acts	21 O.S. 1087	0-6 months + <b>registration</b>
Lewd Acts or Proposals with Minor	21 O.S. 1123	3-20 years <i>Victim under age 12, 25yrs to Life;</i> 2 <sup>nd</sup> offense – no probation/deferred; 3d offense – Life or LWOP <b>85% + registration</b>
Using Technology to Solicit a Minor for Sex	21 O.S. 1040.13a	0-10 yrs up to \$10k fine + <b>registration</b>
<i>Generally</i> Indecent Exposure, Solicitation of Minor for Sex	21 O.S. 1021 et al 21 O.S. 1040 et al ( <i>see infra</i> )	30 days to 1 year unless children; If a child involved, 10-30 years; victim under age 12, then 25-Life See statute + <b>registration</b>
Possession & Mfg of Chid Porn or Obscene Mat'l	21 O.S. 1021(A) (3)	30 days to 10 years + \$500 to \$20,000 fine + <b>registration</b> <i>No deferred sentences;</i> <i>If victim is under 12 years, then 25 yrs to Life</i>

Child Porn AGGRAVATED Possession 100 or more images	21 O.S. 1040.12	0 - Life + up to \$10k fine <i>85% but NOT listed in 57 O.S. 582. Possibly still subject to registration because C.P.</i>
Procuring a Minor for Porn	21 O.S. 1021.2	0-20 yrs + up to \$25k fine <b>85% + registration</b>
Enabling Child Porn	21 O.S. 1021.3	0-20 yrs + up to \$25k fine <b>85% + registration</b>
Child Porn Procurement & Possession of Child Porn	21 O.S. 1024 et al	0-20 yrs, up to \$25k <b>85% + registration</b>
Child Porn publishing, distribution or participation	21 O.S. 1040.8	0-1 yr \$2k for obscene mat'l 0-20 yrs for child porn NLT \$10k 2 <sup>nd</sup> offense C.P. 10-30 yrs >\$20k + <b>registration</b>
Importing Child Porn for Distribution	21 O.S. 1040.13	0 - 10 yrs and \$10k + <b>registration (possibly 85%)</b>
Purchase, procurement or possession of obscene mat'l	21 O.S. 1024.2	0-20 yrs + up to \$25k fine <b>85% + registration</b>
Sending or Selling obscene mat'l or child porn or importing	21 O.S. 1040.21	0-1 yr county + \$1k <i>Not listed in 57 O.S. 582 but possibly still subject to registration</i>
Child Prostitution	21 O.S. 1028 & 1030	0-10yrs + fines \$5k -\$10k; <b>85% + registration</b>
Detaining & Enticing Children for Prostitution; using drugs to force children into prostitution	21 O.S. 1088	1-25 years; + <b>registration</b>
Contributing to Delinquency of Minor	21 O.S. 856	0-1 yr; 0-3 yrs; 0-5 yrs; 5-10 yrs; <i>must register if sexual exploitation</i>
Child Endangerment by Permitting Child Abuse	21 O.S. 852.1	0-4 yrs up to \$5k <i>must register if sexual exploitation</i>
Incest	21 O.S. 885	0-10 years; + <b>registration</b>
Display of mat'l harmful to minors	21 O.S. 1040.75	Definitions only.
Interactive Computer Services – removal of CP	21 O.S. 1040.80	Definitions & punishment 0-\$1k 2d offense up to \$5k 3d offense 0-1 year up to \$30k
Revenge Porn & Non-consensual dissimination of Porn Images	21 O.S. 1040.13b	0-1 yr up to \$1k 0-4 yrs (if for financial gain) 0-10 yrs (2d offense for financial gain)

PROSTITUTION CRIMES		
Prostitution 1st offense	21 O.S. 1028	30 days to 1 year + 40=80 hrs C.S/ and \$2,500; <i>No registration</i>
Prostitution 2nd offense	21 O.S. 1028	30 days to 1 year + 40=80 hrs C.S and \$5,000; <i>No registration</i>
Prostitution 3d offense	21 O.S. 1028	30 days to 1 year + 40=80 hrs C.S/ and \$7,500; <i>No registration</i>
Child Prostitution	21 O.S. 1028	0-10yrs + fines \$5k - \$10k; <b>85% + registration</b>
Detaining & Enticing Children for Prostitution; using drugs to force children into prostitution	21 O.S. 1088	1-25 years; + <b>registration</b> Is this subject ot 85%? 22 OS 13.1 (17)
Prostitution –w/ HIV	21 O.S. 1028	0-5 yrs
Prostitution w/in 1000 feet of church or school	21 O.S. 1028	see statute
Solicitation of Prostitution	21 O.S. 1029	see prostitution provisions above
Pandering/Pimping	21 O.S. 1081	2-20 yrs; + \$1k-3K (1 <sup>st</sup> ); \$3k-\$6k (2 <sup>nd</sup> ); \$3k-\$9k (3 <sup>rd</sup> ); <i>No registration</i>
Keeping Disorderly House	21 O.S. 1025, 1026, 1027, 1028	up to \$2,000 fine; or 0-1 year or up to \$500 fine
Maintaining House of Prostitution	21 O.S. 1028	See statute; same as prostitution penalties
COMPUTER CRIMES ACT		
Computer Crimes Act	21 O.S. 1953	0 - 10 yrs; <i>NO registration</i>
Using Computer to Violate Oklahoma Laws	21 O.S. 1958	0 - 5 yrs; <i>NO registration</i>
SEX OFFENDER REGISTRATION		
SORNA	57 O.S. 581 et seq	
Failure to Register & GPS violations	57 O.S. 587	0-5 yrs and up to \$5k or 0-1 yr and up to \$1k
S.O. working in school; S.O. residing w/in 2,000 ft of school; S.O. residing together with other S.O.'s	57 O.S. 589 to 590.1	Some felony; some misdemeanor; see statute for ranges of punishment.
MARY RIPPEY VIOLENT OFFENDER REGISTRATION		
Mary Rippey Act	57 O.S. 591 et seq	

### ALTERNATIVE NON-REGISTRY CRIMES

*These are ideas only. I am NOT telling you that this will work. You need to do the research and check with DOC before entering a plea. With that understanding, you could request State file a new charge to one of the following*  
**MISDEMEANORS:**

1. Grossly disturbing the peace/outraging public decency/public urination, 21 O.S. § 22, punishable by 0 to 1 year in the County Jail and up to \$500 fine, or both, **(BE CAREFUL IT DOESN'T ALLEGE SEXUAL EXPLOITATION OR ABUSE)**
2. Stalking, 21 O.S. § 1173; first offense is a misdemeanor punishable by 0 to 1 year in the County Jail and up to \$1,000 fine, or both. Subsequent stalking is felony 0-5 yrs or 0-10 yrs plus fines.
3. Simple assault, 21 O.S. § 644, a misdemeanor punishable by 0 to 30 or 0 to 90 days in the County Jail and up to \$1,000 fine, or both. **(BE CAREFUL IT DOESN'T ALLEGE SEXUAL EXPLOITATION OR ABUSE)**
4. Simple battery, 21 O.S. § 642, a misdemeanor punishable by 0-90 days in the county jail and up to \$1,000 fine, or both. **(BE CAREFUL IT DOESN'T ALLEGE SEXUAL EXPLOITATION OR ABUSE)**
5. Public nuisance, 21 O.S. § 1192, a misdemeanor punishable by 0 to 1 year and \$1,000 fine, or both.
6. Offering to engage in prostitution/pandering 21 O.S. §§ 1028 and 1081.
7. Obstruction of officer, 21 O.S. § 540, a misdemeanor punishable by 0 to 1 year and \$1,000 fine, or both.
8. Aiding in Commission of a Misdemeanor, 21 O.S. § 28, punishable by 0-1 year.
9. **\*\*Conspiracy**, 21 O.S. § 421, punishable by 0-1 year and up to \$500 if misdemeanor (can also be a felony). **(BE CAREFUL IT DOESN'T ALLEGE SEXUAL EXPLOITATION OR ABUSE)**
10. Compounding or Concealing a Crime, 21 O.S. § 543, punishable by 0-6 months or 0-1 year and up to \$250 if misdemeanor (can also be a felony).

Alternatively, if a felony charge is required to work the plea agreement, the State could amend to one of these **FELONIES**:

1. Assault with intent to commit a felony 21 O.S. § 681 (but what felony – aggravated A&B or perhaps adultery) punishable by 0 to 5 years in prison and up to a \$500 fine or both; **(BE CAREFUL IT DOESN'T ALLEGE SEXUAL EXPLOITATION OR ABUSE)**
2. Aggravated A & B, 21 O.S. § 646 – a felony punishable by 1 to 5 years in prison and up to a \$500 fine, or both; **(BE CAREFUL IT DOESN'T ALLEGE SEXUAL EXPLOITATION OR ABUSE)**
3. Adultery 21 O.S. § 871 – a felony punishable by 0 to 5 years in prison and up to a \$500 fine, or both. Possibly unconstitutional because no similar crime of fornication.
4. Accessory to Felony. 21 O.S. §§ 173 and 175.
5. **\*\*Attempt**, 21 O.S. §§ 42, 43, and 44 – a felony punishable by 0 to 4 years in prison and up to a \$500 fine, or both. Is an attempt subject to registration – *possibly not*. See 57 O.S. 581 et seq.
6. **\*\*Conspiracy**, 21 O.S. § 421, punishable by 0-10 years and up to \$5,000 if felony (can also be misdemeanor).
7. Compounding or Concealing a Crime, 21 O.S. § 543 punishable by 0-3 or 0-5 yrs (can also be a misdemeanor).

**Note** Most judges require a reasonable factual basis for the crime, so be creative but fair.

**\*\* Note** 57 O.S. 582(B) and (C) include **conspiracy and attempt** for registration of foreign or military convictions.

## MISC. STATUTES APPLICABLE TO SEX CRIMES

Deferred sentences are NOT allowed if Sex Offender Registration is required. 22 O.S. 991c(I).

ALTERNATIVE MISDEMEANOR FILING. *Most crimes* can be filed as a misdemeanor *at the discretion of the D.A.*, 22 O.S. § 234, even if listed only as a felony. Exception: D.A. cannot amend from felony to misdemeanor for those crimes listed in 21 O.S. 13.1 (85% crimes) or in 21 O.S. § 1040.13b(G) (revenge porn and non-consensual sexual images for financial gain).

MANDATORY MINIMUM SENTENCES. 85% laws may apply—do research. 21 O.S. § 13.1.

There is a 2 year post-incarceration supervision required for most offenses (if required to serve time). 22 O.S. § 991a(A)(1)(f).

Fines may be required *even if there is no specified fine amount* in the charged statute. 21 O.S. § 64. Up to \$1,000 for misdemeanors and up to \$10,000 for felony crimes.

SEX OFFENDER REGISTRATION. For *most* of these sex crimes, if convicted client is also looking at mandatory Sex Offender registration for 15, 25 or life (as determined by a committee at the DOC). See 57 O.S. §§ 581 et seq. If you do NOT know, call DOC Sentencing Dept.

MARY RIPPY VIOLENT OFFENDER REGISTRATION, See 57 O.S. §§ 591 et seq.

PRIOR CONVICTIONS/ENHANCEMENTS. There are enhanced penalties within the specific statutes for many sex crimes. We also have the general “habitual offender” enhancements for after-formers and prior convictions in 21 O.S. 51.1. See Section 51.1 for how to calculate the punishment ranges. *Some can be staggering*. If a sex crime is subject to registration, second offense is 10 yrs to life. Others can be twice or three times the original range of punishment. Some are 2-to-life, 10-to-life, or 20-to-life. So research carefully in Section 51.1.

*Sexual assault* defined. 21 O.S. § 112, “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.”

*Consent* defined. 21 O.S. § 113, 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.”

Voluntary intoxication generally not a defense. 21 O.S. § 153.

Oklahoma Victim’s Rights Act, 21 O.S. § 142A;

Sexual Assault Victim’s Right to Information Act. 21 O.S. § 142C.

**BEWARE:** *Do your own research, as the statutes and punishment ranges can change. Also check 57 O.S. 582 for sex offender registration issues and 57 O.S. 591 et seq (Mary Rippy) for violent offender registration. Check 21 O.S. 13.1 for application of the 85% law.*

## AMENDING THE CHARGE

TO OCDLA

I'll chime in here on this one just to clarify something and to provide some words of caution, as I observed numerous defendants (probably more than 50 times) over my five plus years with DOC where an attorney thought they were amending a crime from a registerable offense to a non-registerable offense only to get caught up in big mess.

As stated already by others in this post, **DOC cannot require someone who pleads to, is convicted of, etc...a crime other than one listed in Section 587 of Title 57 to register as a sex offender.** However, what DOC often is faced with is someone who was originally charged with a crime that is clearly a sex crime and a registerable offense, and the charge is amended to a crime that may be a registerable offense if the crime involved sexual assault (for assault with intent to commit a felony) or sexual abuse or sexual exploitation (such as with kidnapping). DOC will focus on the statute cited in the J&S to first determine if it is one that must register (easy cases) or if it is one that requires additional consideration.

When I was at DOC, we took the position that a J&S for an amended crime (that was one that is listed in Section 582 but is only applicable if specific facts are present) **included a finding by the court that the crime did not involve the specific triggering language found in Section 582, we would so honor that statement in the J&S** (and no further inquiry into the case was necessary). **If the J&S did not so state, DOC is obligated to look into the underlying facts of the case (allegations in the Information, PC Affidavit, police reports, etc.) to determine whether the crime involved allegations consistent with the triggering language.** If it did, then DOC would still require the individual to register (no doubt frustrating the parties and nullifying the efforts behind negotiating the amended charge). The statement by the Defendant contained in the plea agreement as the factual basis for the plea is largely ignored by DOC for this determination - this is where there is probably a good case to challenge DOC on this if the factual statement is specific enough and references that it the conduct of the defendant did not involve the triggering language.

Now, that does not mean that the J&S can say whether a defendant must register or not, as that is beyond the sentencing court's authority. Rather, **what DOC would rely upon was a factual finding by the court that it included in the J&S (or it could do so by a separate order), and that finding would provide DOC the information it needed without having to make its own findings for purposes of determining whether someone must register.** There were plenty of times with those crimes containing triggering language under Section 582 when the judge would refuse to make such a finding. I am sure many of you can guess why an elected judge would not want to go out of his way to make a finding that is probably inconsistent with the allegations in the case and could end the judge's career (should that defendant reoffend by committing a sex crime). So, my caution is be careful what the amended charge is, and, to be safe, push for an amended charge that is not listed in Section 582.

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*David A. Cincotta*

### **57 O.S. 582 – SORNA**

A. The provisions of the Sex Offenders Registration Act shall apply to any person residing, working or attending school within the State of Oklahoma who, after November 1, 1989, **has been CONVICTED**, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term, or is currently serving a sentence or any form of probation or parole **for A CRIME or an ATTEMPT to commit a crime provided** for in Section 843.5 of Title 21 of the Oklahoma Statutes **if the offense involved sexual abuse or sexual exploitation as those terms are defined** in Section 1-1-105 of Title 10A of the Oklahoma Statutes, Section 681, **if the offense involved sexual assault**, 741, **if the offense involved sexual abuse or sexual exploitation**, Section 748, **if the offense involved human trafficking for commercial sex**, Section 843.1, **if the offense involved sexual abuse or sexual exploitation**, Section 852.1, **if the offense involved sexual abuse of a child**, 856, **if the offense involved child prostitution or human trafficking for commercial sex**, 865 et seq., 885, 886, 888, 891, **if the offense involved sexual abuse or sexual exploitation**, 1021, 1021.2, 1021.3, 1024.2, 1029, **if the offense involved child prostitution**, 1040.8, **if the offense involved child pornography**, 1040.12a, 1040.13, 1040.13a, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes.

**Note that Section 582(B) and ( C) both reference conspiracy and attempt for someone entering Oklahoma with a foreign or military conviction.**

## **Suspended Sentences, 22 O.S. 991**

1. Except as otherwise provided in the Elderly and Incapacitated Victim's Protection Program, 1 when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:
  - a. Suspend the execution of sentence in whole or in part, with or without probation. The court may order the following conditions:
    - f. to confinement as provided by law together with a term of post-imprisonment community supervision for not less than three (3) years of the total term allowed by law for imprisonment, with or without restitution ....
    - p. to perform one or more courses of treatment, education or rehabilitation . . . .
    - dd. in the case of a person convicted of prostitution shall require counseling . . . .
    - ee. The court shall require the person to comply with sex offender specific rules and conditions of supervision established by DOC and require a treatment program designed for the treatment of sex offenders. The program shall include polygraph. ...
7. In addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. ...
9. Shall require the person to participate in a treatment program designed specifically for the treatment of sex offenders, ... Such treatment shall be at the expense of the defendant based on the defendant's ability to pay;
12. For a sex offender who is habitual or aggravated as defined by Section 584 of Title 57 of the Oklahoma Statutes shall be supervised by DOC for the duration of the registration period and shall be assigned to GPS monitoring. The cost of such monitoring device shall be reimbursed by the offender;
13. The court may prohibit the person from accessing or using any Internet social networking web site that has the potential or likelihood of allowing the sex offender to have contact with any child who is under the age of eighteen (18) years; or
14. The court shall require the person to register any electronic mail address information, instant message, chat or other Internet communication name or identity information that the person uses or intends to use while accessing the Internet or used for other purposes of social networking or other similar Internet communication.
- E. Probation . . . In the case of a person convicted of a sex offense, supervision shall begin immediately upon release from incarceration or if parole is granted and shall not be limited to two (2) years. Provided further, any supervision provided for in this section may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence . . . .
- I. Shall submit to DNA testing. . . . Except as required by SORNA, a deferred judgment does not require submission to deoxyribonucleic acid testing.
- K. Neither DA nor Judge can waive SORNA registration.