

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2254

By: Goodwin

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2011, Section 843.5, as amended by Section 1, Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2018, Section 843.5), which relates to penalties for abuse, neglect and sexual abuse of a child; modifying scope of certain definitions; deleting certain unlawful acts and related penalties; reducing certain penalties; updating statutory references; providing sentencing requirement for persons convicted of enabling abuse or neglect; making sentencing requirements retroactive; authorizing requests for sentence modification; directing courts to modify certain sentences; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 843.5, as amended by Section 1, Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2018, Section 843.5), is amended to read as follows:

Section 843.5 A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one

1 (1) year, or by a fine of not less than Five Hundred Dollars  
2 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both  
3 such fine and imprisonment. As used in this subsection, "child  
4 abuse" means the willful or malicious harm ~~or threatened harm or~~  
5 ~~failure to protect from harm or threatened harm to the health,~~  
6 ~~safety, or welfare~~ of a child under eighteen (18) years of age by  
7 another, or the act of willfully or maliciously injuring, torturing  
8 or maiming a child under eighteen (18) years of age by another.

9 B. ~~Any parent or other person who shall willfully or~~  
10 ~~maliciously engage in enabling child abuse shall, upon conviction,~~  
11 ~~be punished by imprisonment in the custody of the Department of~~  
12 ~~Corrections not exceeding life imprisonment, or by imprisonment in a~~  
13 ~~county jail not exceeding one (1) year, or by a fine of not less~~  
14 ~~than Five Hundred Dollars (\$500.00) nor more than Five Thousand~~  
15 ~~Dollars (\$5,000.00) or both such fine and imprisonment. As used in~~  
16 ~~this subsection, "enabling child abuse" means the causing, procuring~~  
17 ~~or permitting of a willful or malicious act of harm or threatened~~  
18 ~~harm or failure to protect from harm or threatened harm to the~~  
19 ~~health, safety, or welfare of a child under eighteen (18) years of~~  
20 ~~age by another. As used in this subsection, "permit" means to~~  
21 ~~authorize or allow for the care of a child by an individual when the~~  
22 ~~person authorizing or allowing such care knows or reasonably should~~  
23 ~~know that the child will be placed at risk of abuse as proscribed by~~  
24 ~~this subsection.~~

1       ~~C.~~ 1. Any parent or other person who shall willfully or  
2 maliciously engage in child neglect shall, upon conviction, be  
3 punished by imprisonment in the custody of the Department of  
4 Corrections not exceeding ~~life imprisonment~~ four (4) years, or by  
5 imprisonment in a county jail not exceeding one (1) year, or by a  
6 fine of not less than Five Hundred Dollars (\$500.00) nor more than  
7 Five Thousand Dollars (\$5,000.00), or both such fine and  
8 imprisonment.

9       2. As used in this subsection, "child neglect" means the  
10 willful or malicious neglect, as defined by subparagraphs a, b and c  
11 of paragraph 47 48 of Section 1-1-105 of Title 10A of the Oklahoma  
12 Statutes, of a child under eighteen (18) years of age by another.

13       ~~D. Any parent or other person who shall willfully or~~  
14 ~~maliciously engage in enabling child neglect shall, upon conviction,~~  
15 ~~be punished by imprisonment in the custody of the Department of~~  
16 ~~Corrections not exceeding life imprisonment, or by imprisonment in a~~  
17 ~~county jail not exceeding one (1) year, or by a fine of not less~~  
18 ~~than Five Hundred Dollars (\$500.00) nor more than Five Thousand~~  
19 ~~Dollars (\$5,000.00), or both such fine and imprisonment. As used in~~  
20 ~~this subsection, "enabling child neglect" means the causing,~~  
21 ~~procuring or permitting of a willful or malicious act of child~~  
22 ~~neglect, as defined by paragraph 47 of Section 1-1-105 of Title 10A~~  
23 ~~of the Oklahoma Statutes, of a child under eighteen (18) years of~~  
24 ~~age by another. As used in this subsection, "permit" means to~~

~~authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.~~

~~E.~~ C. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, except as provided in Section 51.1a of this title or as otherwise provided in subsection F of this section for a child victim under twelve (12) years of age. 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. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, which includes but is not

1 limited to rape, incest, and lewd or indecent acts or proposals, of  
2 a child under eighteen (18) years of age by another.

3 ~~F.~~ D. Any parent or other person who shall willfully or  
4 maliciously engage in sexual abuse to a child under twelve (12)  
5 years of age shall, upon conviction, be punished by imprisonment in  
6 the custody of the Department of Corrections for not less than  
7 twenty-five (25) years nor more than life imprisonment, and by a  
8 fine of not less than Five Hundred Dollars (\$500.00) nor more than  
9 Five Thousand Dollars (\$5,000.00).

10 ~~G.~~ E. Any parent or other person who shall willfully or  
11 maliciously engage in enabling child sexual abuse shall, upon  
12 conviction, be punished by imprisonment in the custody of the  
13 Department of Corrections not exceeding ~~life imprisonment~~ twenty-  
14 five (25) years, or by imprisonment in a county jail not exceeding  
15 one (1) year, or by a fine of not less than Five Hundred Dollars  
16 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both  
17 such fine and imprisonment. As used in this subsection, "enabling  
18 child sexual abuse" means the causing, procuring or permitting of a  
19 willful or malicious act of child sexual abuse, which includes but  
20 is not limited to rape, incest, and lewd or indecent acts or  
21 proposals, of a child under the age of eighteen (18) by another. As  
22 used in this subsection, "permit" means to authorize or allow for  
23 the care of a child by an individual when the person authorizing or  
24 allowing such care knows ~~or reasonably should know~~ that the child

1 will be placed at risk of sexual abuse as proscribed by this  
2 subsection.

3 ~~H.~~ F. Any parent or other person who shall willfully or  
4 maliciously engage in child sexual exploitation shall, upon  
5 conviction, be punished by imprisonment in the custody of the  
6 Department of Corrections not exceeding life imprisonment, or by  
7 imprisonment in a county jail not exceeding one (1) year, or by a  
8 fine of not less than Five Hundred Dollars (\$500.00) nor more than  
9 Five Thousand Dollars (\$5,000.00), or both such fine and  
10 imprisonment except as provided in subsection I of this section for  
11 a child victim under twelve (12) years of age. Except for persons  
12 sentenced to life or life without parole, any person sentenced to  
13 imprisonment for two (2) years or more for a violation of this  
14 subsection shall be required to serve a term of post-imprisonment  
15 supervision pursuant to subparagraph f of paragraph 1 of subsection  
16 A of Section 991a of Title 22 of the Oklahoma Statutes under  
17 conditions determined by the Department of Corrections. The jury  
18 shall be advised that the mandatory post-imprisonment supervision  
19 shall be in addition to the actual imprisonment. As used in this  
20 subsection, "child sexual exploitation" means the willful or  
21 malicious sexual exploitation, which includes but is not limited to  
22 allowing, permitting, or encouraging a child under eighteen (18)  
23 years of age to engage in prostitution or allowing, permitting,  
24 encouraging or engaging in the lewd, obscene or pornographic

1 photographing, filming, or depicting of a child under eighteen (18)  
2 years of age by another.

3 ~~I.~~ G. Any parent or other person who shall willfully or  
4 maliciously engage in sexual exploitation of a child under twelve  
5 (12) years of age shall, upon conviction, be punished by  
6 imprisonment in the custody of the Department of Corrections for not  
7 less than twenty-five (25) years nor more than life imprisonment,  
8 and by a fine of not less than Five Hundred Dollars (\$500.00) nor  
9 more than Five Thousand Dollars (\$5,000.00).

10 ~~J.~~ H. Any parent or other person who shall willfully or  
11 maliciously engage in enabling child sexual exploitation shall, upon  
12 conviction, be punished by imprisonment in the custody of the  
13 Department of Corrections not exceeding ~~life imprisonment~~ twenty-  
14 five (25) years, or by imprisonment in a county jail not exceeding  
15 one (1) year, or by a fine of not less than Five Hundred Dollars  
16 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both  
17 such fine and imprisonment. As used in this subsection, "enabling  
18 child sexual exploitation" means the causing, procuring or  
19 permitting of a willful or malicious act of child sexual  
20 exploitation, which includes but is not limited to allowing,  
21 permitting, or encouraging a child under eighteen (18) years of age  
22 to engage in prostitution or allowing, permitting, encouraging or  
23 engaging in the lewd, obscene or pornographic photographing,  
24 filming, or depicting of a child under eighteen (18) years of age by

1 another. As used in this subsection, "permit" means to authorize or  
2 allow for the care of a child by an individual when the person  
3 authorizing or allowing such care knows ~~or reasonably should know~~  
4 that the child will be placed at risk of sexual exploitation as  
5 proscribed by this subsection.

6 ~~K.~~ I. Notwithstanding any other provision of law, any parent or  
7 other person convicted of forcible anal or oral sodomy, rape, rape  
8 by instrumentation, or lewd molestation of a child under fourteen  
9 (14) years of age subsequent to a previous conviction for any  
10 offense of forcible anal or oral sodomy, rape, rape by  
11 instrumentation, or lewd molestation of a child under fourteen (14)  
12 years of age shall be punished by ~~death or by~~ imprisonment for life  
13 without parole.

14 ~~L.~~ J. Provided, however, that nothing contained in this section  
15 shall prohibit any parent or guardian from using reasonable and  
16 ordinary force pursuant to Section 844 of this title.

17 K. Any person convicted of enabling an act previously or  
18 currently prohibited by this section shall not be sentenced to any  
19 penalty that exceeds the penalty received by the actual perpetrator  
20 of the act or that exceeds the maximum penalties in this section. A  
21 person previously convicted of enabling child abuse or neglect shall  
22 not be sentenced to any penalty exceeding that prescribed for the  
23 crime of child endangerment as provided in Section 852.1 of Title 21  
24 of the Oklahoma Statutes.



1        L. The provisions of this subsection shall be retroactive. Any  
2 person convicted of enabling an act previously or currently  
3 prohibited by this section and sentenced to a penalty exceeding that  
4 of the actual perpetrator or exceeding the maximum penalties in this  
5 section may request a modification of the sentence by motion or  
6 petition to the sentencing court. The court shall thereupon modify  
7 the sentence to ensure compliance with this subsection.

8        SECTION 2. This act shall become effective November 1, 2019.

9  
10       57-1-7475        GRS        01/16/19