

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2035

By: Branham

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 elements of certain prohibited acts; decreasing certain penalties; modifying fine amounts; providing certain allowable defense; deleting certain defined term; defining terms; directing sentencing requirements be applied retroactively; 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) year, or by a fine of not less than Five Hundred Dollars

1 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
2 such fine and imprisonment. As used in this subsection, "child
3 abuse" means the willful or malicious harm or threatened harm ~~or~~
4 ~~failure to protect from harm or threatened harm~~ to the health,
5 safety, or welfare of a child under eighteen (18) years of age by
6 another, or the act of willfully or maliciously injuring, torturing
7 or maiming a child under eighteen (18) years of age by another.

8 B. Any parent or other person who ~~shall~~ willfully or
9 maliciously ~~engage in enabling~~ fails to protect a child from child
10 abuse shall be guilty of failure to protect and, upon conviction, be
11 punished by imprisonment in the custody of the Department of
12 Corrections not exceeding ~~life imprisonment~~ four (4) years, or by
13 imprisonment in a county jail not exceeding one (1) year, or by a
14 fine of not ~~less than Five Hundred Dollars (\$500.00) nor~~ more than
15 Five Thousand Dollars (\$5,000.00) or both such fine and
16 imprisonment. However, it shall be an affirmative defense to this
17 paragraph if the person had a reasonable apprehension that any
18 action to stop the physical abuse would result in substantial bodily
19 harm to the person or the child.

20 1. As used in this subsection, ~~"enabling child abuse"~~ "failure
21 to protect" means ~~the causing, procuring or permitting of a willful~~
22 ~~or malicious act of harm or threatened harm or~~ failure to ~~protect~~
23 ~~from harm or threatened harm to the health, safety, or welfare of a~~
24 ~~child under eighteen (18) years of age by another. As used in this~~

1 ~~subsection, "permit" means to authorize or allow for the care of a~~
2 ~~child by an individual when the person authorizing or allowing such~~
3 ~~care knows or reasonably should know that the child will be placed~~
4 ~~at risk of abuse as proscribed by this subsection~~ take reasonable
5 action to remedy or prevent child abuse, as defined in Section 1-1-
6 105 of Title 10A of the Oklahoma Statutes, of a child under eighteen
7 (18) years of age by another.

8 2. As used in this subsection, "willful or malicious" means
9 with actual knowledge, but in no case shall evidence that the
10 defendant was the victim of domestic abuse be used against him or
11 her to satisfy the actual knowledge element.

12 C. Any parent or other person who shall willfully or
13 maliciously engage in child neglect shall, upon conviction, be
14 punished by imprisonment in the custody of the Department of
15 Corrections not exceeding life imprisonment, or by imprisonment in a
16 county jail not exceeding one (1) year, or by a fine of not less
17 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
18 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
19 this subsection, "child neglect" means the willful or malicious
20 neglect, as defined by paragraph 47 48 of Section 1-1-105 of Title
21 10A of the Oklahoma Statutes, of a child under eighteen (18) years
22 of age by another.

23 D. Any parent or other person who shall willfully or
24 maliciously engage in enabling child neglect shall, upon conviction,

1 be punished by imprisonment in the custody of the Department of
2 Corrections not exceeding ~~life imprisonment~~ four (4) years, or by
3 imprisonment in a county jail not exceeding one (1) year, or by a
4 fine of not less than ~~Five Hundred Dollars (\$500.00)~~ nor more than
5 Five Thousand Dollars (\$5,000.00), or both such fine and
6 imprisonment. However, it shall be an affirmative defense to this
7 paragraph if the person had a reasonable apprehension that any
8 action to stop the physical abuse would result in substantial bodily
9 harm to the person or the child.

10 1. As used in this subsection, "enabling child neglect" means
11 ~~the causing, procuring or~~ willfully or maliciously permitting ~~of a~~
12 another to engage in the willful or malicious act of child neglect,
13 as defined by paragraph ~~47~~ 48 of Section 1-1-105 of Title 10A of the
14 Oklahoma Statutes, of a child under eighteen (18) years of age ~~by~~
15 ~~another.~~

16 2. As used in this subsection, ~~"permit"~~ "willfully or
17 maliciously permitting" means to authorize or allow for the care of
18 a child by an individual when the person authorizing or allowing
19 such care ~~knows or reasonably should know~~ has actual knowledge that
20 the child will be placed at risk of neglect as proscribed by this
21 subsection, but in no case shall evidence that the defendant was the
22 victim of domestic abuse be used against him or her to satisfy the
23 actual knowledge element.

1 E. Any parent or other person who shall willfully or
2 maliciously engage in child sexual abuse shall, upon conviction, be
3 punished by imprisonment in the custody of the Department of
4 Corrections not exceeding life imprisonment, or by imprisonment in a
5 county jail not exceeding one (1) year, or by a fine of not less
6 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
7 Dollars (\$5,000.00), or both such fine and imprisonment, except as
8 provided in Section 51.1a of this title or as otherwise provided in
9 subsection F of this section for a child victim under twelve (12)
10 years of age. Except for persons sentenced to life or life without
11 parole, any person sentenced to imprisonment for two (2) years or
12 more for a violation of this subsection shall be required to serve a
13 term of post-imprisonment supervision pursuant to subparagraph f of
14 paragraph 1 of subsection A of Section 991a of Title 22 of the
15 Oklahoma Statutes under conditions determined by the Department of
16 Corrections. The jury shall be advised that the mandatory post-
17 imprisonment supervision shall be in addition to the actual
18 imprisonment. As used in this section, "child sexual abuse" means
19 the willful or malicious sexual abuse, which includes but is not
20 limited to rape, incest, and lewd or indecent acts or proposals, of
21 a child under eighteen (18) years of age by another.

22 F. Any parent or other person who shall willfully or
23 maliciously engage in sexual abuse to a child under twelve (12)
24 years of age shall, upon conviction, be punished by imprisonment in

1 the custody of the Department of Corrections for not less than
2 twenty-five (25) years nor more than life imprisonment, and by a
3 fine of not less than Five Hundred Dollars (\$500.00) nor more than
4 Five Thousand Dollars (\$5,000.00).

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

21 H. Any parent or other person who shall willfully or
22 maliciously engage in child sexual exploitation shall, upon
23 conviction, be punished by imprisonment in the custody of the
24 Department of Corrections not exceeding life imprisonment, or by

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

21 I. Any parent or other person who shall willfully or
22 maliciously engage in sexual exploitation of a child under twelve
23 (12) years of age shall, upon conviction, be punished by
24 imprisonment in the custody of the Department of Corrections for not

1 less than twenty-five (25) years nor more than life imprisonment,
2 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
3 more than Five Thousand Dollars (\$5,000.00).

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

23 K. Notwithstanding any other provision of law, any parent or
24 other person convicted of forcible anal or oral sodomy, rape, rape

1 by instrumentation, or lewd molestation of a child under fourteen
2 (14) years of age subsequent to a previous conviction for any
3 offense of forcible anal or oral sodomy, rape, rape by
4 instrumentation, or lewd molestation of a child under fourteen (14)
5 years of age shall be punished by death or by imprisonment for life
6 without parole.

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

10 M. Penalties for convictions pursuant to subsections B and D of
11 this section shall be retroactive.

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

13
14 57-1-5508 GRS 01/15/19
15
16
17
18
19
20
21
22
23
24