

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3408

By: Bush

AS INTRODUCED

An Act relating to crimes and punishments; amending
21 O.S. 2021, Section 843.5, which relates to child
abuse; modifying definition; defining term; and
providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 843.5, is
amended to read as follows:

Section 843.5 A. Any person who shall willfully or maliciously
engage in child abuse, as defined in this section, 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
(\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
such fine and imprisonment.

B. Any person responsible for the health, safety or welfare of
a child who shall willfully or maliciously engage in enabling child
abuse, as defined in this section, shall, upon conviction, be

1 punished by imprisonment in the custody of the Department of
2 Corrections not exceeding life imprisonment, or by imprisonment in a
3 county jail not exceeding one (1) year, or by a fine of not less
4 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
5 Dollars (\$5,000.00) or both such fine and imprisonment.

6 C. Any person responsible for the health, safety or welfare of
7 a child who shall willfully or maliciously engage in child neglect,
8 as defined in this section, shall, upon conviction, be punished by
9 imprisonment in the custody of the Department of Corrections not
10 exceeding life imprisonment, or by imprisonment in a county jail not
11 exceeding one (1) year, or by a fine of not less than Five Hundred
12 Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00),
13 or both such fine and imprisonment.

14 D. Any parent or other person who shall willfully or
15 maliciously engage in enabling child neglect shall, upon conviction,
16 be punished by imprisonment in the custody of the Department of
17 Corrections not exceeding life imprisonment, or by imprisonment in a
18 county jail not exceeding one (1) year, or by a fine of not less
19 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
20 Dollars (\$5,000.00), or both such fine and imprisonment.

21 E. Any person responsible for the health, safety or welfare of
22 a child who shall willfully or maliciously engage in child sexual
23 abuse, as defined in this section, shall, upon conviction, be
24 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, except as
5 provided in Section 51.1a of this title or as otherwise provided in
6 subsection F of this section for a child victim under twelve (12)
7 years of age. Except for persons sentenced to life or life without
8 parole, any person sentenced to imprisonment for two (2) years or
9 more for a violation of this subsection shall be required to serve a
10 term of post-imprisonment supervision pursuant to subparagraph f of
11 paragraph 1 of subsection A of Section 991a of Title 22 of the
12 Oklahoma Statutes under conditions determined by the Department of
13 Corrections. The jury shall be advised that the mandatory post-
14 imprisonment supervision shall be in addition to the actual
15 imprisonment.

16 F. Any person responsible for the health, safety or welfare of
17 a child who shall willfully or maliciously engage in child sexual
18 abuse, as defined in this section, to a child under twelve (12)
19 years of age shall, upon conviction, be punished by imprisonment in
20 the custody of the Department of Corrections for not less than
21 twenty-five (25) years nor more than life imprisonment, and by a
22 fine of not less than Five Hundred Dollars (\$500.00) nor more than
23 Five Thousand Dollars (\$5,000.00).
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1 G. Any parent or other person who shall willfully or
2 maliciously engage in enabling child sexual abuse shall, upon
3 conviction, be punished by imprisonment in the custody of the
4 Department of Corrections not exceeding life imprisonment, 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 H. Any person who shall willfully or maliciously engage in
10 child sexual exploitation, as defined in this section, shall, upon
11 conviction, be punished by imprisonment in the custody of the
12 Department of Corrections not exceeding life imprisonment, 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 except as provided in subsection I of this section for
17 a child victim under twelve (12) years of age. Except for persons
18 sentenced to life or life without parole, any person sentenced to
19 imprisonment for two (2) years or more for a violation of this
20 subsection shall be required to serve a term of post-imprisonment
21 supervision pursuant to subparagraph f of paragraph 1 of subsection
22 A of Section 991a of Title 22 of the Oklahoma Statutes under
23 conditions determined by the Department of Corrections. The jury
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1 shall be advised that the mandatory post-imprisonment supervision
2 shall be in addition to the actual imprisonment.

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

10 J. Any person responsible for the health, safety or welfare of
11 a child who shall willfully or maliciously engage in enabling child
12 sexual exploitation, 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.

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

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

6 M. Consent shall not be a defense for any violation provided
7 for in this section.

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

11 O. As used in this section:

12 1. "Child abuse" means:

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

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

21 c. the act of knowingly providing false medical history
22 to a health care provider in order to obtain an
23 unnecessary medical treatment for a child under

1 eighteen (18) years of age by a person responsible for
2 a child's health, safety, or welfare;

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

7 3. "Child sexual abuse" means the willful or malicious sexual
8 abuse of a child under eighteen (18) years of age by a person
9 responsible for a child's health, safety or welfare and includes,
10 but is not limited to:

- 11 a. sexual intercourse,
- 12 b. penetration of the vagina or anus, however slight, by
- 13 an inanimate object or any part of the human body not
- 14 amounting to sexual intercourse,
- 15 c. sodomy,
- 16 d. incest, or
- 17 e. a lewd act or proposal, as defined in this section;

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

- 21 a. human trafficking, as provided for in Section 748 of
- 22 this title, if the offense involved child trafficking
- 23 for commercial sex,

- b. trafficking in children, as provided for in Section 866 of this title, if the offense was committed for the sexual gratification of any person,
- c. procuring or causing the participation of a minor in child pornography, as provided for in Section 1021.2 of this title,
- d. purchase, procurement or possession of child pornography, as provided for in Section 1024.2 of this title,
- e. engaging in or soliciting prostitution, as provided for in Section 1029 of this title, if the offense involved child prostitution,
- f. publication, distribution or participation in the preparation of obscene material, as provided for in Section 1040.8 of this title, if the offense involved child pornography,
- g. aggravated possession of child pornography, as provided for in Section 1040.12a of this title,
- h. sale or distribution of obscene material, as provided for in Section 1040.13 of this title,
- i. soliciting sexual conduct or communication with a minor by use of technology, as provided for in Section 1043.13a of this title,

1 j. offering or transporting a child for purposes of
2 prostitution, as provided for in Section 1087 of this
3 title, and

4 k. child prostitution, as provided for in Section 1088 of
5 this title;

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

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

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

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

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

21 10. "Lewd act or proposal" means:

22 a. making any oral, written or electronic or computer-
23 generated lewd or indecent proposal to a child for the
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- 1 child to have unlawful sexual relations or sexual
2 intercourse with any person,
- 3 b. looking upon, touching, mauling or feeling the body or
4 private parts of a child in a lewd or lascivious
5 manner or for the purpose of sexual gratification,
- 6 c. asking, inviting, enticing or persuading any child to
7 go alone with any person to a secluded, remote or
8 secret place for a lewd or lascivious purpose,
- 9 d. urinating or defecating upon a child or causing,
10 forcing or requiring a child to defecate or urinate
11 upon the body or private parts of another person for
12 the purpose of sexual gratification,
- 13 e. ejaculating upon or in the presence of a child,
- 14 f. causing, exposing, forcing or requiring a child to
15 look upon the body or private parts of another person
16 for the purpose of sexual gratification,
- 17 g. causing, forcing or requiring any child to view any
18 obscene materials, child pornography or materials
19 deemed harmful to minors as such terms are defined in
20 Sections 1024.1 and 1040.75 of this title,
- 21 h. causing, exposing, forcing or requiring a child to
22 look upon sexual acts performed in the presence of the
23 child for the purpose of sexual gratification, or
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i. causing, forcing or requiring a child to touch or feel the body or private parts of the child or another person for the purpose of sexual gratification;

11. "Medical history" means any oral, written, or electronic communication regarding an individual's current or previous symptoms, diagnoses, or family medical history;

12. "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 the conduct or harm proscribed by this section;

~~12.~~ 13. "Person responsible for a child's health, safety or welfare" for purposes of this section shall include, but not be limited to:

- a. the parent of the child,
- b. the legal guardian of the child,
- c. the custodian of the child,
- d. the foster parent of the child,
- e. a person eighteen (18) years of age or older with whom the parent of the child cohabitates, who is at least three (3) years older than the child,
- f. any other person eighteen (18) years of age or older residing in the home of the child, who is at least three (3) years older than the child,

1 g. an owner, operator, agent, employee or volunteer of a
2 public or private residential home, institution,
3 facility or day treatment program, as defined in
4 Section 175.20 of Title 10 of the Oklahoma Statutes,
5 that the child attended,

6 h. an owner, operator, agent, employee or volunteer of a
7 child care facility, as defined in Section 402 of
8 Title 10 of the Oklahoma Statutes, that the child
9 attended,

10 i. an intimate partner of the parent of the child, as
11 defined in Section 60.1 of Title 22 of the Oklahoma
12 Statutes, or

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

15 ~~13.~~ 14. "Sexual intercourse" means the actual penetration,
16 however slight, of the vagina or anus by the penis; and

17 ~~14.~~ 15. "Sodomy" means:

18 a. penetration, however slight, of the mouth of the child
19 by a penis,

20 b. penetration, however slight, of the vagina of a person
21 responsible for a child's health, safety or welfare,
22 by the mouth of a child,

1 c. penetration, however slight, of the mouth of the
2 person responsible for a child's health, safety or
3 welfare by the penis of the child, or

4 d. penetration, however slight, of the vagina of the
5 child by the mouth of the person responsible for a
6 child's health, safety or welfare.

7 SECTION 2. This act shall become effective November 1, 2022.

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9 58-2-8884 CMA 12/29/21
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