

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

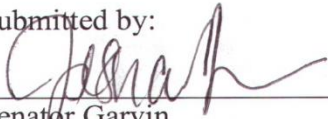
No. 2

COMMITTEE AMENDMENT

(Date)

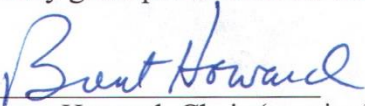
I move to amend House Bill No. 1540 by substituting the attached floor substitute (Request # 2156) for the title, enacting clause and entire body of the measure.

Submitted by:




Senator Garvin

I hereby grant permission for the floor substitute to be adopted.



Senator Howard, Chair (required)



Senator Floyd

Senator Gollihare

Senator Hall



Senator Boren

Senator Jech

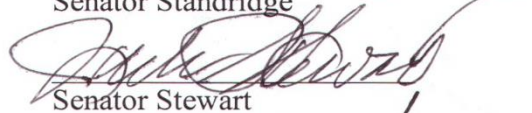


Senator Brooks



Senator Standridge

Senator Bullard



Senator Stewart

Senator Daniels



Senator Weaver

Senator Treat, President Pro Tempore

Senator McCartney, Majority Floor Leader

Note: Judiciary Committee majority requires seven (7) members' signatures.

Garvin-TEK-FS-HB1540
4/26/2023 8:45 AM

(Floor Amendments Only)

Date and Time Filed:

4-26-23 10:27 am *fd*

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1540

By: Moore of the House

and

Garvin of the Senate

7
8
9 FLOOR SUBSTITUTE

10 [crimes and punishments - child abuse and related
11 criminal penalties - scope - effective date]

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

16 Section 843.5 A. Any person who shall willfully or maliciously
17 engage in child abuse, as defined in this section, shall, upon
18 conviction, be guilty of a felony punishable by imprisonment in the
19 custody of the Department of Corrections not ~~exceeding~~ to exceed
20 life imprisonment, ~~or by imprisonment in a county jail not exceeding~~
21 ~~one (1) year, or and by a fine of not less than Five Hundred Dollars~~
22 ~~(\$500.00) nor more than~~ to exceed Five Thousand Dollars (\$5,000.00),
23 ~~or both such fine and imprisonment.~~

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

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

18 D. Any parent or other person who shall willfully or
19 maliciously engage in enabling child neglect shall, upon conviction,
20 be punished by imprisonment in the custody of the Department of
21 Corrections not ~~exceeding~~ to exceed life imprisonment, ~~or by~~
22 ~~imprisonment in a county jail not exceeding one (1) year, or and~~ by
23 a fine of not less than Five Hundred Dollars (\$500.00) nor more than
24

1 to exceed Five Thousand Dollars (\$5,000.00), ~~or both such fine and~~
2 ~~imprisonment.~~

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

22 F. Any person responsible for the health, safety or welfare of
23 a child who shall willfully or maliciously engage in child sexual
24 abuse, as defined in this section, to a child under twelve (12)

1 years of age shall, upon conviction, be punished by imprisonment in
2 the custody of the Department of Corrections for not less than
3 twenty-five (25) years nor more than life imprisonment, and by a
4 ~~fine of not less than Five Hundred Dollars (\$500.00) nor more than~~
5 to exceed Five Thousand Dollars (\$5,000.00).

6 G. Any parent or other person who shall willfully or
7 maliciously engage in enabling child sexual abuse shall, upon
8 conviction, be punished by imprisonment in the custody of the
9 Department of Corrections not ~~exceeding~~ to exceed life imprisonment,
10 ~~or by imprisonment in a county jail not exceeding one (1) year, or~~
11 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
12 ~~more than~~ to exceed Five Thousand Dollars (\$5,000.00), ~~or both such~~
13 ~~fine and imprisonment.~~

14 H. Any person who shall willfully or maliciously engage in
15 child sexual exploitation, as defined in this section, shall, upon
16 conviction, be punished by imprisonment in the custody of the
17 Department of Corrections not ~~exceeding~~ to exceed life imprisonment,
18 ~~or by imprisonment in a county jail not exceeding one (1) year, or~~
19 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
20 ~~more than~~ to exceed Five Thousand Dollars (\$5,000.00), ~~or both such~~
21 ~~fine and imprisonment~~ except as provided in subsection I of this
22 section for a child victim under twelve (12) years of age. Except
23 for persons sentenced to life or life without parole, any person
24 sentenced to imprisonment for two (2) years or more for a violation

1 of this subsection shall be required to serve a term of post-
2 imprisonment supervision pursuant to subparagraph f of paragraph 1
3 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
4 under conditions determined by the Department of Corrections. The
5 jury shall be advised that the mandatory post-imprisonment
6 supervision shall be in addition to the actual imprisonment.

7 I. Any person who shall willfully or maliciously engage in
8 child sexual exploitation, as defined in this section, of a child
9 under twelve (12) years of age shall, upon conviction, be punished
10 by imprisonment in the custody of the Department of Corrections for
11 not less than twenty-five (25) years nor more than life
12 imprisonment, and by a fine of not less than Five Hundred Dollars
13 ~~(\$500.00) nor more than~~ to exceed Five Thousand Dollars (\$5,000.00).

14 J. Any person responsible for the health, safety or welfare of
15 a child who shall willfully or maliciously engage in enabling child
16 sexual exploitation, as defined in this section, shall, upon
17 conviction, be punished by imprisonment in the custody of the
18 Department of Corrections not ~~exceeding~~ to exceed life imprisonment,
19 ~~or by imprisonment in a county jail not exceeding one (1) year, or~~
20 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
21 ~~more than~~ to exceed Five Thousand Dollars (\$5,000.00), ~~or both such~~
22 ~~fine and imprisonment.~~

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

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

6 L. ~~Provided, however, that nothing~~ No provision contained in
7 this section shall prohibit any parent or guardian from using
8 reasonable and ordinary force pursuant to Section 844 of this title.

9 M. Consent shall not be a defense for any violation provided
10 for in this section.

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

14 O. As used in this section:

15 1. "Child abuse" means:

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

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

24

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

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

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

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

- 19 a. human trafficking, as provided for in Section 748 of
20 this title, if the offense involved child trafficking
21 for commercial sex,
- 22 b. trafficking in children, as provided for in Section
23 866 of this title, if the offense was committed for
24 the sexual gratification of any person,

- 1 c. procuring or causing the participation of a minor in
2 child pornography, as provided for in Section 1021.2
3 of this title,
- 4 d. purchase, procurement or possession of child
5 pornography, as provided for in Section 1024.2 of this
6 title,
- 7 e. engaging in or soliciting prostitution, as provided
8 for in Section 1029 of this title, if the offense
9 involved child prostitution,
- 10 f. publication, distribution or participation in the
11 preparation of obscene material, as provided for in
12 Section 1040.8 of this title, if the offense involved
13 child pornography,
- 14 g. aggravated possession of child pornography, as
15 provided for in Section 1040.12a of this title,
- 16 h. sale or distribution of obscene material, as provided
17 for in Section 1040.13 of this title,
- 18 i. soliciting sexual conduct or communication with a
19 minor by use of technology, as provided for in Section
20 ~~1043.13a~~ 1040.13a of this title,
- 21 j. offering or transporting a child for purposes of
22 prostitution, as provided for in Section 1087 of this
23 title, ~~and~~ or
- 24

1 k. child prostitution, as provided for in Section 1088 of
2 this title;

3 5. "Enabling child abuse" means ~~the causing, procuring or~~
4 ~~permitting of child abuse by~~ a person responsible for a child's
5 health, safety, or welfare causing, procuring, or permitting:

6 a. the willful or malicious harm or threatened harm or
7 failure to protect from harm or threatened harm to the
8 health, safety, or welfare of a child under eighteen
9 (18) years of age, or

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

13 6. "Enabling child neglect" means ~~the causing, procuring or~~
14 ~~permitting of child neglect by~~ a person responsible for a child's
15 health, safety, or welfare causing, procuring, or permitting child
16 neglect as defined by Section 1-1-105 of Title 10A of the Oklahoma
17 Statutes;

18 7. "Enabling child sexual abuse" means ~~the causing, procuring~~
19 ~~or permitting of child sexual abuse by~~ a person responsible for a
20 child's health, safety, or welfare causing, procuring, or permitting
21 child sexual abuse as defined by Section 1-1-105 of Title 10A of the
22 Oklahoma Statutes;

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

4 9. "Incest" means ~~marrying, committing adultery or fornicating~~
5 sexual intercourse or penetration of the vagina or anus, however
6 slight, by an inanimate object or any part of the human body not
7 amounting to sexual intercourse with a child ~~by a person responsible~~
8 ~~for the health, safety or welfare of a child~~ who is within the
9 degrees of consanguinity within which marriages are by the laws of
10 this state declared incestuous and void;

11 10. "Lewd act or proposal" means:

- 12 a. making any oral, written or electronic or computer-
13 generated lewd or indecent proposal to a child for the
14 child to have unlawful sexual relations or sexual
15 intercourse with any person,
- 16 b. looking upon, touching, mauling or feeling the body or
17 private parts of a child in a lewd or lascivious
18 manner or for the purpose of sexual gratification,
- 19 c. asking, inviting, enticing or persuading any child to
20 go alone with any person to a secluded, remote or
21 secret place for a lewd or lascivious purpose,
- 22 d. urinating or defecating upon a child or causing,
23 forcing or requiring a child to defecate or urinate

24

1 upon the body or private parts of another person for
2 the purpose of sexual gratification,

3 e. ejaculating upon or in the presence of a child,

4 f. causing, exposing, forcing or requiring a child to
5 look upon the body or private parts of another person
6 for the purpose of sexual gratification,

7 g. causing, forcing or requiring any child to view any
8 obscene materials, child pornography or materials
9 deemed harmful to minors as such terms are defined in
10 Sections 1024.1 and 1040.75 of this title,

11 h. causing, exposing, forcing or requiring a child to
12 look upon sexual acts performed in the presence of the
13 child for the purpose of sexual gratification, or

14 i. causing, forcing or requiring a child to touch or feel
15 the body or private parts of the child or another
16 person for the purpose of sexual gratification;

17 11. "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 the conduct or harm proscribed by this section;

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

24 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,
- g. an owner, operator, agent, employee or volunteer of a public or private residential home, institution, facility or day treatment program, as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, that the child attended,
- h. an owner, operator, agent, employee or volunteer of a child care facility, as defined in Section 402 of Title 10 of the Oklahoma Statutes, that the child attended,
- i. an intimate partner of the parent of the child, as defined in Section 60.1 of Title 22 of the Oklahoma Statutes, or
- j. a person who has voluntarily accepted responsibility for the care or supervision of a child;

1 13. "Sexual intercourse" means the actual penetration, however
2 slight, of the vagina or anus by the penis; and

3 14. "Sodomy" means:

- 4 a. penetration, however slight, of the mouth of the child
5 by a penis,
- 6 b. penetration, however slight, of the vagina of a person
7 responsible for a child's health, safety or welfare,
8 by the mouth of a child,
- 9 c. penetration, however slight, of the mouth of the
10 person responsible for a child's health, safety or
11 welfare by the penis of the child, or
- 12 d. penetration, however slight, of the vagina of the
13 child by the mouth of the person responsible for a
14 child's health, safety or welfare.

15 SECTION 2. This act shall become effective November 1, 2023.

16
17 59-1-2156 TEK 4/26/2023 11:39:10 AM
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