

1                           **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                           STATE OF OKLAHOMA

3                           1st Session of the 59th Legislature (2023)

4   HOUSE BILL 1540

                          By: Moore of the House

5   and

6   **Garvin** of the Senate

7   

8   AS INTRODUCED

9           An Act relating to crimes and punishments; amending  
10          21 O.S. 2021, Section 843.5, which relates to child  
11          abuse and related criminal penalties; removing  
12          certain penalties related to fines and county jail  
13          imprisonment; clarifying scope of certain  
14          definitions; and providing an effective date.

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

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

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

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

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

24

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

20 F. Any person responsible for the health, safety or welfare of  
21 a child who shall willfully or maliciously engage in child sexual  
22 abuse, as defined in this section, to a child under twelve (12)  
23 years of age shall, upon conviction, be punished by imprisonment in  
24 the custody of the Department of Corrections for not less than

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

4 G. Any parent or other person who shall willfully or  
5 maliciously engage in enabling child sexual abuse 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.~~

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

1 A of Section 991a of Title 22 of the Oklahoma Statutes under  
2 conditions determined by the Department of Corrections. The jury  
3 shall be advised that the mandatory post-imprisonment supervision  
4 shall be in addition to the actual imprisonment.

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

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

21 K. Notwithstanding any other provision of law, any person  
22 convicted of forcible anal or oral sodomy, rape, rape by  
23 instrumentation, or lewd molestation of a child under fourteen (14)  
24 years of age subsequent to a previous conviction for any offense of

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

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

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

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

12 O. As used in this section:

13 1. "Child abuse" means:

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

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

22 2. "Child neglect" means the willful or malicious neglect, as  
23 defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes, of  
24

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

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

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

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

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

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- 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  
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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,

- 1           b.    the legal guardian of the child,
- 2           c.    the custodian of the child,
- 3           d.    the foster parent of the child,
- 4           e.    a person eighteen (18) years of age or older with whom
- 5                the parent of the child cohabitates, who is at least
- 6                three (3) years older than the child,
- 7           f.    any other person eighteen (18) years of age or older
- 8                residing in the home of the child, who is at least
- 9                three (3) years older than the child,
- 10          g.    an owner, operator, agent, employee or volunteer of a
- 11               public or private residential home, institution,
- 12               facility or day treatment program, as defined in
- 13               Section 175.20 of Title 10 of the Oklahoma Statutes,
- 14               that the child attended,
- 15          h.    an owner, operator, agent, employee or volunteer of a
- 16               child care facility, as defined in Section 402 of
- 17               Title 10 of the Oklahoma Statutes, that the child
- 18               attended,
- 19          i.    an intimate partner of the parent of the child, as
- 20               defined in Section 60.1 of Title 22 of the Oklahoma
- 21               Statutes, or
- 22          j.    a person who has voluntarily accepted responsibility
- 23               for the care or supervision of a child;
- 24

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 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated  
18 02/22/2023 - DO PASS, As Coauthored.