

1 **SENATE FLOOR VERSION**

2 April 4, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1540

6 By: Moore of the House

7 and

8 Garvin of the Senate

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

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

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

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

22 B. Any person responsible for the health, safety or welfare of
23 a child who shall willfully or maliciously engage in enabling child
24 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).~~

24

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
24

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;

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

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

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

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

- 15 a. human trafficking, as provided for in Section 748 of
16 this title, if the offense involved child trafficking
17 for commercial sex,
- 18 b. trafficking in children, as provided for in Section
19 866 of this title, if the offense was committed for
20 the sexual gratification of any person,
- 21 c. procuring or causing the participation of a minor in
22 child pornography, as provided for in Section 1021.2
23 of this title,

- 1 d. purchase, procurement or possession of child
2 pornography, as provided for in Section 1024.2 of this
3 title,
4 e. engaging in or soliciting prostitution, as provided
5 for in Section 1029 of this title, if the offense
6 involved child prostitution,
7 f. publication, distribution or participation in the
8 preparation of obscene material, as provided for in
9 Section 1040.8 of this title, if the offense involved
10 child pornography,
11 g. aggravated possession of child pornography, as
12 provided for in Section 1040.12a of this title,
13 h. sale or distribution of obscene material, as provided
14 for in Section 1040.13 of this title,
15 i. soliciting sexual conduct or communication with a
16 minor by use of technology, as provided for in Section
17 ~~1043.13a~~ 1040.13a of this title,
18 j. offering or transporting a child for purposes of
19 prostitution, as provided for in Section 1087 of this
20 title, ~~and~~ or
21 k. child prostitution, as provided for in Section 1088 of
22 this title;
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1 5. "Enabling child abuse" means ~~the causing, procuring or~~
2 ~~permitting of child abuse by~~ a person responsible for a child's
3 health, safety, or welfare causing, procuring, or permitting:

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

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

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

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

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

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

8 10. "Lewd act or proposal" means:

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

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

8 h. causing, exposing, forcing or requiring a child to
9 look upon sexual acts performed in the presence of the
10 child for the purpose of sexual gratification, or

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

14 11. "Permit" means to authorize or allow for the care of a
15 child by an individual when the person authorizing or allowing such
16 care knows or reasonably should know that the child will be placed
17 at risk of the conduct or harm proscribed by this section;

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

- 21 a. the parent of the child,
- 22 b. the legal guardian of the child,
- 23 c. the custodian of the child,
- 24 d. the foster parent of the child,

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

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

23 14. "Sodomy" means:
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- 1 a. penetration, however slight, of the mouth of the child
2 by a penis,
- 3 b. penetration, however slight, of the vagina of a person
4 responsible for a child's health, safety or welfare,
5 by the mouth of a child,
- 6 c. penetration, however slight, of the mouth of the
7 person responsible for a child's health, safety or
8 welfare by the penis of the child, or
- 9 d. penetration, however slight, of the vagina of the
10 child by the mouth of the person responsible for a
11 child's health, safety or welfare.

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

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
14 April 4, 2023 - DO PASS AS AMENDED
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