

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2032

By: Albright

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6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2011, Section 843.5, as amended by Section 1,
Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2018, Section
9 843.5), which relates to penalties for abuse, neglect
and sexual abuse of a child; deleting certain
10 prohibited acts and related penalties; modifying
elements of certain prohibited act; defining term;
11 providing sentencing requirements for persons
convicted of enabling offenses; declaring sentencing
12 requirements be applied retroactively; authorizing
convicted persons to apply for sentence modification;
and providing an effective date.

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

16 SECTION 1. AMENDATORY 21 O.S. 2011, Section 843.5, as
17 amended by Section 1, Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2018,
18 Section 843.5), is amended to read as follows:

19 Section 843.5 A. Any parent or other person who shall
20 willfully or maliciously engage in child abuse shall, upon
21 conviction, be guilty of a felony punishable by imprisonment in the
22 custody of the Department of Corrections not exceeding life
23 imprisonment, or by imprisonment in a county jail not exceeding one
24 (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 child abuse shall, upon conviction,~~
10 ~~be punished by imprisonment in the custody of the Department of~~
11 ~~Corrections not exceeding life imprisonment, or by imprisonment in a~~
12 ~~county jail not exceeding one (1) year, or by a fine of not less~~
13 ~~than Five Hundred Dollars (\$500.00) nor more than Five Thousand~~
14 ~~Dollars (\$5,000.00) or both such fine and imprisonment. As used in~~
15 ~~this subsection, "enabling child abuse" means the causing, procuring~~
16 ~~or permitting of a willful or malicious act of harm or threatened~~
17 ~~harm or failure to protect from harm or threatened harm to the~~
18 ~~health, safety, or welfare of a child under eighteen (18) years of~~
19 ~~age by another. As used in this subsection, "permit" means to~~
20 ~~authorize or allow for the care of a child by an individual when the~~
21 ~~person authorizing or allowing such care knows or reasonably should~~
22 ~~know that the child will be placed at risk of abuse as proscribed by~~
23 ~~this subsection.~~

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1 ~~C.~~ 1. Any parent or other person who shall willfully or
2 maliciously engage in child neglect in the first degree 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 2. Any parent or other person who shall willfully or
10 maliciously engage in child neglect in the second degree shall, upon
11 conviction, be punished by imprisonment in the custody of the
12 Department of Corrections for a term not exceeding four (4) years,
13 or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by
14 both such fine and imprisonment.

15 3. As used in this subsection, ~~"child neglect":~~

16 a. "child neglect in the first degree" means the willful
17 or malicious neglect, as defined by subparagraphs a
18 and c of paragraph 47 48 of Section 1-1-105 of Title
19 10A of the Oklahoma Statutes, of a child under
20 eighteen (18) years of age by another, and

21 b. "child neglect in the second degree" means the willful
22 or malicious neglect, as defined by subparagraph b of
23 paragraph 48 of Section 1-1-105 of Title 10A of the
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1 Oklahoma Statutes, of a child under eighteen (18)
2 years of age by another.

3 ~~D. Any parent or other person who shall willfully or~~
4 ~~maliciously engage in enabling child neglect shall, upon conviction,~~
5 ~~be punished by imprisonment in the custody of the Department of~~
6 ~~Corrections not exceeding life imprisonment, or by imprisonment in a~~
7 ~~county jail not exceeding one (1) year, or by a fine of not less~~
8 ~~than Five Hundred Dollars (\$500.00) nor more than Five Thousand~~
9 ~~Dollars (\$5,000.00), or both such fine and imprisonment. As used in~~
10 ~~this subsection, "enabling child neglect" means the causing,~~
11 ~~procuring or permitting of a willful or malicious act of child~~
12 ~~neglect, as defined by paragraph 47 of Section 1-1-105 of Title 10A~~
13 ~~of the Oklahoma Statutes, of a child under eighteen (18) years of~~
14 ~~age by another. As used in this subsection, "permit" means to~~
15 ~~authorize or allow for the care of a child by an individual when the~~
16 ~~person authorizing or allowing such care knows or reasonably should~~
17 ~~know that the child will be placed at risk of neglect as proscribed~~
18 ~~by this subsection.~~

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

1 Dollars (\$5,000.00), or both such fine and imprisonment, except as
2 provided in Section 51.1a of this title or as otherwise provided in
3 subsection ~~F~~ D of this section for a child victim under twelve (12)
4 years of age. Except for persons sentenced to life or life without
5 parole, any person sentenced to imprisonment for two (2) years or
6 more for a violation of this subsection shall be required to serve a
7 term of post-imprisonment supervision pursuant to subparagraph f of
8 paragraph 1 of subsection A of Section 991a of Title 22 of the
9 Oklahoma Statutes under conditions determined by the Department of
10 Corrections. The jury shall be advised that the mandatory post-
11 imprisonment supervision shall be in addition to the actual
12 imprisonment. As used in this section, "child sexual abuse" means
13 the willful or malicious sexual abuse, which includes but is not
14 limited to rape, incest, and lewd or indecent acts or proposals, of
15 a child under eighteen (18) years of age by another.

16 ~~F.~~ D. Any parent or other person who shall willfully or
17 maliciously engage in sexual abuse to a child under twelve (12)
18 years of age shall, upon conviction, be punished by imprisonment in
19 the custody of the Department of Corrections for not less than
20 twenty-five (25) years nor more than life imprisonment, and by a
21 fine of not less than Five Hundred Dollars (\$500.00) nor more than
22 Five Thousand Dollars (\$5,000.00).

23 ~~G.~~ E. Any parent or other person who shall willfully or
24 maliciously engage in enabling child sexual abuse shall, upon

1 conviction, be punished by imprisonment in the custody of the
2 Department of Corrections not exceeding life imprisonment, 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. As used in this subsection, "enabling child sexual
7 abuse" means the causing, procuring or permitting of a willful or
8 malicious act of child sexual abuse, which includes but is not
9 limited to rape, incest, and lewd or indecent acts or proposals, of
10 a child under the age of eighteen (18) by another. As used in this
11 subsection, "permit" means to authorize or allow for the care of a
12 child by an individual when the person authorizing or allowing such
13 care knows or reasonably should know that the child will be placed
14 at risk of sexual abuse as proscribed by this subsection.

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

1 sentenced to imprisonment for two (2) years or more for a violation
2 of this subsection shall be required to serve a term of post-
3 imprisonment supervision pursuant to subparagraph f of paragraph 1
4 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
5 under conditions determined by the Department of Corrections. The
6 jury shall be advised that the mandatory post-imprisonment
7 supervision shall be in addition to the actual imprisonment. As
8 used in this subsection, "child sexual exploitation" means the
9 willful or malicious sexual exploitation, which includes but is not
10 limited to allowing, permitting, or encouraging a child under
11 eighteen (18) years of age to engage in prostitution or allowing,
12 permitting, encouraging or engaging in the lewd, obscene or
13 pornographic photographing, filming, or depicting of a child under
14 eighteen (18) years of age by another.

15 ~~F.~~ G. Any parent or other person who shall willfully or
16 maliciously engage in sexual exploitation of a child under twelve
17 (12) years of age shall, upon conviction, be punished by
18 imprisonment in the custody of the Department of Corrections for not
19 less than twenty-five (25) years nor more than life imprisonment,
20 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
21 more than Five Thousand Dollars (\$5,000.00).

22 ~~J.~~ H. Any parent or other person who shall willfully or
23 maliciously engage in enabling child sexual exploitation shall, upon
24 conviction, be punished by imprisonment in the custody of the

1 Department of Corrections not exceeding life imprisonment, or by
2 imprisonment in a county jail not exceeding one (1) year, or by a
3 fine of not less than Five Hundred Dollars (\$500.00) nor more than
4 Five Thousand Dollars (\$5,000.00), or both such fine and
5 imprisonment. As used in this subsection, "enabling child sexual
6 exploitation" means the causing, procuring or permitting of a
7 willful or malicious act of child sexual exploitation, which
8 includes but is not limited to allowing, permitting, or encouraging
9 a child under eighteen (18) years of age to engage in prostitution
10 or allowing, permitting, encouraging or engaging in the lewd,
11 obscene or pornographic photographing, filming, or depicting of a
12 child under eighteen (18) years of age by another. As used in this
13 subsection, "permit" means to authorize or allow for the care of a
14 child by an individual when the person authorizing or allowing such
15 care knows or reasonably should know that the child will be placed
16 at risk of sexual exploitation as proscribed by this subsection.

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

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

4 K. Any person convicted of enabling an act prohibited by the
5 provisions of this section shall not be sentenced to any penalty
6 that exceeds the penalty received by the actual perpetrator of the
7 act. Except for crimes of enabling child sexual abuse or child
8 sexual exploitation, if the actual perpetrator of the act could not
9 be sentenced due to his or her death or absence, then a person
10 convicted of enabling shall not be sentenced to any penalty
11 exceeding that prescribed for the crime of child endangerment as
12 provided in Section 852.1 of this title. The provisions of this
13 subsection shall be retroactive. Any person convicted of enabling
14 an act previously or currently prohibited by this section and
15 sentenced to a penalty exceeding that of the actual perpetrator may
16 request a modification of the sentence by motion or petition to the
17 sentencing court. The court shall thereupon modify the sentence to
18 ensure compliance with the provisions of this subsection.

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

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21 57-1-7372 GRS 01/04/19
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