

1 STATE OF OKLAHOMA

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

3 SENATE BILL 884

By: Boren

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2021, Section 843.5, which relates to
9 penalties for child abuse; providing duress by abuse
10 affirmative defense for persons accused of certain
11 crimes; providing evidentiary requirements; stating
12 alternative punishment for persons who successfully
13 assert duress by abuse defense; providing an
14 exception; providing procedures and guidelines for
15 needs assessments and recovery plans; stating time
16 limitation for completion of recovery plan; stating
17 penalty for persons who unsuccessfully complete
18 recovery plan; providing requirements for creating
19 needs assessments and recovery plans; authorizing the
20 filing of petitions for post-conviction relief under
21 certain circumstances; directing alleged perpetrators
22 of abuse to pay certain costs; defining terms; and
23 providing an effective date.

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

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

27 Section 843.5. A. Any person who shall willfully or
28 maliciously engage in child abuse, as defined in this section,
29 shall, upon conviction, be guilty of a felony punishable by
30 imprisonment in the custody of the Department of Corrections not

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

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

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

21 D. Any parent or other person who shall willfully or
22 maliciously engage in enabling child neglect shall, upon conviction,
23 be punished by imprisonment in the custody of the Department of
24 Corrections not exceeding life imprisonment, or by imprisonment in a

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

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

23 F. Any person responsible for the health, safety or welfare of
24 a child who shall willfully or maliciously engage in child sexual

1 abuse, as defined in this section, to a child under twelve (12)
2 years of age shall, upon conviction, be punished by imprisonment in
3 the custody of the Department of Corrections for not less than
4 twenty-five (25) years nor more than life imprisonment, and by a
5 fine of not less than Five Hundred Dollars (\$500.00) nor more than
6 Five Thousand Dollars (\$5,000.00).

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

15 H. Any person who shall willfully or maliciously engage in
16 child 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 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 I of this section for
23 a child victim under twelve (12) years of age. Except for persons
24 sentenced to life or life without parole, any person sentenced to

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

8 I. Any person who shall willfully or maliciously engage in
9 child sexual exploitation, as defined in this section, of a child
10 under twelve (12) years of age shall, upon conviction, be punished
11 by imprisonment in the custody of the Department of Corrections for
12 not less than twenty-five (25) years nor more than life
13 imprisonment, and by a fine of not less than Five Hundred Dollars
14 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

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

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

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

11 M. Consent shall not be a defense for any violation provided
12 for in this section.

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

16 O. A person who is charged with willfully or maliciously
17 engaging in enabling child abuse, enabling child neglect, enabling
18 child sexual abuse, or enabling child sexual exploitation pursuant
19 to the provisions of this section shall be entitled to assert the
20 affirmative defense of duress by abuse if the person had a
21 reasonable apprehension that acting to stop or prevent the child
22 abuse, child neglect, child sexual abuse or child sexual
23 exploitation would result in imminent intimate partner abuse to
24 himself or herself in retaliation.

1 P. Duress by abuse may be shown by direct or indirect evidence
2 including, but not limited to, medical testimony or evidence, expert
3 testimony by a psychologist, psychiatrist, other expert witness or
4 any combination thereof.

5 Q. A person who successfully asserts the affirmative defense of
6 duress by abuse when charged with willfully or maliciously engaging
7 in enabling child abuse, enabling child neglect, enabling child
8 sexual abuse, or enabling child sexual exploitation shall be ordered
9 by the court to participate and complete a needs assessment and
10 recovery plan.

11 R. A person found guilty of willfully or maliciously engaging
12 in enabling child abuse, enabling child neglect, enabling child
13 sexual abuse, or enabling child sexual exploitation, who asserts the
14 affirmative defense of duress by abuse may be ordered by the court
15 to participate and complete a needs assessment and recovery plan in
16 lieu of a conviction and punishment at the discretion of the court.
17 Provided, the court shall not order the person to participate and
18 complete the needs assessment and recovery plan if the person
19 refuses to cooperate in the criminal proceedings or the court makes
20 specific findings that having the person participate and complete
21 the needs assessment and recovery plan in lieu of a conviction and
22 punishment would create an undue risk to public safety or the
23 health, safety, and welfare of the victim.

1 S. A recovery plan shall not exceed two (2) years in length and
2 shall consist of medical, social and psychological services as may
3 be deemed beneficial to aid the person in the cessation of
4 victimization, recovery from mental or physical abuse trauma or
5 other needs identified bearing connection with the alleged abuse
6 suffered by the person.

7 T. 1. If a needs assessment and recovery plan is ordered by
8 the court for a person convicted of willfully or maliciously
9 engaging in enabling child abuse, enabling child neglect, enabling
10 child sexual abuse, or enabling child sexual exploitation, the
11 person shall have two (2) years to complete the court-approved
12 recovery plan under the deferred sentencing procedure provided for
13 in Section 991c of Title 22 of the Oklahoma Statutes. The court may
14 extend this time if the court determines that it is reasonable and
15 necessary for the person to successfully complete the recovery plan.

16 2. Should the person fail to complete the recovery plan within
17 two (2) years or if the person commits or enables the commission of
18 any subsequent crime of child abuse, child neglect, child sexual
19 abuse or child sexual exploitation, the person shall be sentenced
20 for the offense as provided for in the provisions of this section.

21 3. The needs assessment and recovery plan program shall be
22 created by a private facility or organization that has been
23 certified by the Office of the Attorney General as a certified
24 domestic violence program or certified sexual assault program

1 pursuant to the provisions of Section 18p-6 of Title 74 of the
2 Oklahoma Statutes and shall be filed with the court. In
3 consultation with the Department of Human Services, the recovery
4 plan shall address the recovery needs of any child associated with
5 or living in the home of the person including home visitations by
6 personnel of the Department of Human Services.

7 U. Any person convicted of a misdemeanor or felony under the
8 provisions of subsections B, D, G or J of this section who, prior to
9 the effective date of this act, would have been authorized to assert
10 the defense of abuse by duress may file a petition for post-
11 conviction relief without regard to the limitations of Section 1086
12 of Title 22 of the Oklahoma Statutes so long as the petition for
13 post-conviction relief is filed within five (5) years of the
14 effective date of this act. Upon filing the petition for post-
15 conviction relief, the court shall retroactively apply the
16 provisions of subsections M, N, O, P and Q of this section.

17 V. The person accused of abusing the individual charged under
18 the provisions of subsection B, D, G or J of this section shall be
19 required to cover all costs of the needs assessment and recovery
20 plan of the individual charged.

21 ~~W.~~ W. As used in this section:

22 1. "Child abuse" means:

- 23 a. the willful or malicious harm or threatened harm or
24 failure to protect from harm or threatened harm to the
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1 health, safety or welfare of a child under eighteen
2 (18) years of age by a person responsible for a
3 child's health, safety or welfare, or

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

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

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

15 a. sexual intercourse,

16 b. penetration of the vagina or anus, however slight, by
17 an inanimate object or any part of the human body not
18 amounting to sexual intercourse,

19 c. sodomy,

20 d. incest, or

21 e. a lewd act or proposal, as defined in this section;

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

- 1 a. human trafficking, as provided for in Section 748 of
2 this title, if the offense involved child trafficking
3 for commercial sex,
4 b. trafficking in children, as provided for in Section
5 866 of this title, if the offense was committed for
6 the sexual gratification of any person,
7 c. procuring or causing the participation of a minor in
8 child pornography, as provided for in Section 1021.2
9 of this title,
10 d. purchase, procurement or possession of child
11 pornography, as provided for in Section 1024.2 of this
12 title,
13 e. engaging in or soliciting prostitution, as provided
14 for in Section 1029 of this title, if the offense
15 involved child prostitution,
16 f. publication, distribution or participation in the
17 preparation of obscene material, as provided for in
18 Section 1040.8 of this title, if the offense involved
19 child pornography,
20 g. aggravated possession of child pornography, as
21 provided for in Section 1040.12a of this title,
22 h. sale or distribution of obscene material, as provided
23 for in Section 1040.13 of this title,
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- 1 i. soliciting sexual conduct or communication with a
2 minor by use of technology, as provided for in Section
3 1043.13a of this title,
4 j. offering or transporting a child for purposes of
5 prostitution, as provided for in Section 1087 of this
6 title, and
7 k. child prostitution, as provided for in Section 1088 of
8 this title;

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

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

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

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

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

1 10. "Intimate partner abuse" means a pattern or series of
2 actions or omissions and verbal or nonverbal communication that are
3 used to harm another person physically or mentally or to exert power
4 and control over another person. Intimate partner abuse may include
5 one or more of the following acts:

- 6 a. Physical violence,
- 7 b. Sexual violence,
- 8 c. Stalking,
- 9 d. Psychological aggression, or
- 10 e. Use of coercive tactics.

11 Intimate partner abuse may be committed by a current or former
12 spouse, boyfriend, girlfriend, or ongoing sexual partner.

13 ~~10.~~ 11. "Lewd act or proposal" means:

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

- 1 d. urinating or defecating upon a child or causing,
2 forcing or requiring a child to defecate or urinate
3 upon the body or private parts of another person for
4 the purpose of sexual gratification,
5 e. ejaculating upon or in the presence of a child,
6 f. causing, exposing, forcing or requiring a child to
7 look upon the body or private parts of another person
8 for the purpose of sexual gratification,
9 g. causing, forcing or requiring any child to view any
10 obscene materials, child pornography or materials
11 deemed harmful to minors as such terms are defined in
12 Sections 1024.1 and 1040.75 of this title,
13 h. causing, exposing, forcing or requiring a child to
14 look upon sexual acts performed in the presence of the
15 child for the purpose of sexual gratification, or
16 i. causing, forcing or requiring a child to touch or feel
17 the body or private parts of the child or another
18 person for the purpose of sexual gratification;

19 ~~11.~~ 12. "Permit" means to authorize or allow for the care of a
20 child by an individual when the person authorizing or allowing such
21 care knows or reasonably should know that the child will be placed
22 at risk of the conduct or harm proscribed by this section;
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1 ~~12.~~ 13. "Person responsible for a child's health, safety or
2 welfare" for purposes of this section shall include, but not be
3 limited to:

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

1 i. an intimate partner of the parent of the child, as
2 defined in Section 60.1 of Title 22 of the Oklahoma
3 Statutes, or

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

6 ~~13.~~ 14. "Sexual intercourse" means the actual penetration,
7 however slight, of the vagina or anus by the penis; and

8 ~~14.~~ 15. "Sodomy" means:

9 a. penetration, however slight, of the mouth of the child
10 by a penis,

11 b. penetration, however slight, of the vagina of a person
12 responsible for a child's health, safety or welfare,
13 by the mouth of a child,

14 c. penetration, however slight, of the mouth of the
15 person responsible for a child's health, safety or
16 welfare by the penis of the child, or

17 d. penetration, however slight, of the vagina of the
18 child by the mouth of the person responsible for a
19 child's health, safety or welfare.

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

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