

ENROLLED HOUSE
BILL NO. 2022

BY: LARASON and SADLER of
the HOUSE

and

CAIN of the SENATE

AN ACT RELATING TO CRIMES AND PUNISHMENTS; AMENDING 21 O.S. 1991, SECTIONS 845 AND 846, WHICH RELATE TO CHILD ABUSE; MODIFYING DEFINITIONS; CLARIFYING LANGUAGE; REQUIRING CERTAIN NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES IN SPECIFIED INSTANCE; SPECIFYING PROCEDURES; PROVIDING FOR RULES; PROVIDING FOR CONTENT; REQUIRING CERTAIN REPORTS; REQUIRING NOTIFICATION OF DEPARTMENT OF HUMAN SERVICES; MAKING CERTAIN REQUIREMENTS OF THE DEPARTMENT OF HUMAN SERVICES AND LOCAL LAW ENFORCEMENT AGENCIES; REQUIRING CERTAIN CONTACTS AND WRITTEN REFERRALS; AUTHORIZING UTILIZATION OF CERTAIN INFORMATION UNDER CERTAIN CONDITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 845, is amended to read as follows:

Section 845. A. It is the policy of this state to provide for the protection of children who have had physical injury inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of ~~those persons~~ persons responsible for ~~their~~ the care and protection of such children.

B. As used in Sections 846 through 848 of this title:

1. "Abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare~~;~~

2. ~~"Harm or threatened harm to a child's health or welfare can occur through: Nonaccidental"~~ "Harm or threatened harm to a child's health or welfare" includes but is not limited to nonaccidental physical or mental injury; sexual abuse, ~~as defined by state law;~~ sexual exploitation, or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, shelter, or medical care except as provided for in Section 846 of this title;

~~2- 3.~~ 3. "Child" means a person under the age of eighteen (18) years. ~~A person;~~

4. "Person responsible for a child's health or welfare" includes ~~the child's a parent;~~ a legal guardian; ~~or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution;~~ custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home,

institution or facility; or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

~~3.~~ 5. "Sexual abuse" includes but is not limited to rape, incest and lewd or indecent acts or proposals, as defined by law, by a person responsible for the child's welfare; and

~~4.~~ 6. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's welfare.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 846, is amended to read as follows:

Section 846. A. 1. Every:

- a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years ~~and every,~~
- b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, ~~every~~
- c. teacher of any child under the age of eighteen (18) years, and ~~every~~
- d. other person

having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him ~~or her~~ by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred. ~~Provided it~~

B. It shall be a misdemeanor for any person to knowingly and willfully fail to promptly report any incident as provided ~~above~~ in this section. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as may be after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his ~~or her~~ parents or other persons responsible for his ~~or her~~ care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

C. 1. The county office receiving any report as ~~herein~~ provided in this section shall investigate said report in accordance with priority guidelines established by the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the district attorney's office in the county wherein the suspected injury occurred together with its

recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services ~~which~~ for the purposes set forth in subsection D of this section.

2. Whenever, after a preliminary inquiry or investigation, the Department of Human Services determines that an alleged abuse or neglect of a child was:

- a. perpetrated by someone other than a person responsible for the child's health and welfare, and
- b. does not appear to be attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child,

the Department shall immediately verbally notify an appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation. The verbal notification to the local law enforcement agency shall be followed by written referral. After making the referral, the Department shall not be responsible for further investigation of the case unless notice is received from the law enforcement agency as provided by paragraph 3 of this subsection. The Department of Human Services shall promulgate rules and regulations for the implementation of the provisions of this subsection. Said rules and regulations shall include but not be limited to provision for adequate and appropriate inquiry or investigation by the Department prior to notification of a local law enforcement agency.

3. Any law enforcement agency receiving a referral as provided in this subsection shall provide the Department of Human Services' local child welfare office with a copy of the report of its investigation resulting from a referral from the Department. Whenever, in the course of a criminal investigation related to child abuse or neglect, a law enforcement agency determines that there is cause to believe that the alleged abuse or neglect was perpetrated by a person responsible for the health and welfare of the child or is attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child, the law enforcement agency shall immediately verbally contact the local child welfare office for the purpose of an investigation by that office. The verbal notification to the local child welfare office shall be followed by a written referral.

D. The Child Welfare Division of the Department of Human Services shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any district attorney's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this ~~section~~ subsection.

E. 1. All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the state or United States in connection with the performance of their official duties.

2. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

F. No provision of this section shall be construed to mean that a child has been abused or neglected because said child's parent,

guardian or custodian in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care of such child.

~~B. G.~~ 1. In every case filed under Section 843 of this title, the judge of the district court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case. The attorney may be allowed a reasonable fee for such services to be paid from the court fund to be fixed by the district court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.

2. A court-appointed special advocate as defined by Section 1109 of Title 10 of the Oklahoma Statutes may be appointed to represent a child who is the alleged subject of child abuse or neglect. The court-appointed special advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

3. At such time as the information maintained by the registry provided for by subsection D of this section is indexed by perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 21st day of May, 1992.

Speaker of the House of
Representatives

Passed the Senate the 22nd day of May, 1992.

President of the Senate