

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1971

By: Bryant (John)

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending 21 O.S. 1991, Sections 845, as amended by Section 1, Chapter 265, O.S.L. 1992, 852.1 and 1123, as amended by Section 3, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1993, Sections 845 and 1123), which relate to crimes against children; modifying cite; defining term; prohibiting the act of child endangerment; defining certain terms concerning child endangerment; modifying definition of sexual battery; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 845, as amended by Section 1, Chapter 265, O.S.L. 1992 (21 O.S. Supp. 1993, 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 persons responsible for the care and protection of such children.

B. As used in Sections ~~846~~ 843 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" includes but is not limited to nonaccidental physical or mental injury; sexual abuse, 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;

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

4. "Person responsible for a child's health or welfare" includes a parent; a legal guardian; 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;

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~~

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; and

7. "Torture" means any injurious act or acts committed on a child without regard for the child's well-being and contrary to the judgment of a prudent person. "Torture" can be of a physical, mental or sexual nature which results in bodily harm or emotional damage.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 852.1, is amended to read as follows:

Section 852.1 A. A person who is the parent, guardian, or person having custody or control over a child as defined in Section 1101 of Title 10 of the Oklahoma Statutes, commits child endangerment when the person knowingly permits physical or sexual abuse of a child or permits torture of a child as defined in Section 845 of this title. However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any immediate action to stop the abuse would result in substantial bodily harm to the person or the child.

B. The provisions of this section shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of ~~Title 21~~ this title or Section 1130 of Title 10 of the Oklahoma Statutes.

C. Any person convicted of violating any provision of this section shall be guilty of a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1123, as amended by Section 3, Chapter 289, O.S.L. 1992 (21 O.S. Supp. 1993, Section 1123), is amended to read as follows:

Section 1123. A. Any person who shall knowingly and intentionally:

1. Make any oral or written lewd or indecent proposal to any child under sixteen (16) years of age for the child to have unlawful sexual relations or sexual intercourse with any person; or

2. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or

3. Ask, invite, entice, or persuade any child under sixteen (16) years of age to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or

4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen (16) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person, upon conviction, shall be deemed guilty of a felony and shall be punished by imprisonment in the Oklahoma State Penitentiary for not less than one (1) year nor more than twenty (20) years. The provisions of this ~~section~~ subsection shall not apply unless the accused is at least three (3) years older than the victim. Any person convicted of a second violation of subsection A of this section shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of subsection A of this section shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fail or refuse to fix punishment then the same shall be pronounced by the court.

B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person ~~sixteen (16) years of age or older,~~ in a lewd and lascivious manner and without the consent of that person. Any person convicted of any violation of this subsection shall be deemed guilty of a felony and shall be punished by imprisonment in the Oklahoma State Penitentiary for not more than five (5) years.

SECTION 4. This act shall become effective September 1, 1994.

44-2-9165

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