

ENGROSSED HOUSE
BILL NO. 1788

By: Seikel of the House
and
Cain of the Senate

An Act relating to children; amending 21 O.S. 1991, Sections 843 and 845, as renumbered by Section 20, Chapter 353, O.S.L. 1995 and as last amended by Sections 15 and 16, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Sections 7115 and 7102), which relate to child abuse; modifying persons subject to punishment; modifying definitions; amending 21 O.S. 1991, Sections 846, as last amended by Section 3, Chapter 353, O.S.L. 1995 and as renumbered by Section 20, Chapter 353, O.S.L. 1995, and 848, as amended by Section 13, Chapter 353, O.S.L. 1995 and as renumbered by Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1996, Sections 7103 and 7113), which relate to child abuse; clarifying which persons shall not be exempt from certain reporting; adding definition; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 843, as renumbered by Section 20, Chapter 353, O.S.L. 1995 and as last amended by Section 15, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7115), is amended to read as follows:

Section 7115. Any ~~parent or other~~ person who shall willfully or maliciously engage in child abuse or neglect or who shall otherwise willfully or maliciously injure, torture, maim, use unreasonable force upon a child under the age of eighteen (18), or sexually abuse, or sexually exploit ~~or otherwise abuse or neglect~~ such child, or any person responsible for the health or welfare of a child who shall willfully or maliciously cause, procure or permit any of said acts to be done, shall upon conviction be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this section, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this section.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 845, as renumbered by Section 20, Chapter 353, O.S.L. 1995 and as last amended by Section 16, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7102), is amended to read as follows:

Section 7102. A. 1. 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. Once conditions of a court-ordered service plan have been met or when allegations in a petition have been corrected, a period of supervision by the court of not less than twelve (12) months shall occur prior to dismissal by the court, subject to the availability of funds. Supervision by the Department

during this period shall be in accordance with rules promulgated by the Department.

2. It is the policy of this state that in investigating allegations of child abuse and neglect, in any necessary removal of a child from the home, in placements of a child required pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or in any administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act, the best interests of the child shall be of paramount consideration.

B. As used in the Oklahoma Child Abuse Reporting and Prevention Act:

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 but not limited to the failure or omission to provide adequate food, clothing, shelter, or medical care or protection from harm or threatened harm;

3. "Child" means any person under the age of eighteen (18) years except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an adult pursuant to Section 7303-4.3 of this title and convicted of a felony;

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, facility or day treatment program as defined in Section

175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

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 health or welfare;~~

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 health or 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 health or welfare;~~

7. "Multidisciplinary personnel" means any team established pursuant to Section 7110 of this title of three or more persons who are trained in the prevention, identification, investigation, prosecution and treatment of child physical and sexual abuse cases and who are qualified to facilitate a broad range of interventions and services related to child abuse;

8. "Ruled out" means a report which is determined by a child protective services worker:

- a. to be false,
- b. to be unfounded,
- c. to be inherently improbable,
- d. to involve an accidental injury where neglect was not a factor, or
- e. as not constituting child abuse or neglect;

9. "Confirmed report" means a report which is determined by a child protective services worker, based upon some credible evidence, to constitute child abuse or neglect;

10. "Uncertain report" means a report which is not ruled out by a child protective services worker, but which has inconclusive

findings and for which there is insufficient evidence to determine whether child abuse or neglect has occurred;

11. "Child protective services worker" means a person employed by the Department of Human Services with sufficient experience or training as determined by the Department in child abuse prevention and identification;

12. "Department" means the Department of Human Services; and

13. "Commission" means the Commission for Human Services.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 846, as last amended by Section 3, Chapter 353, O.S.L. 1995 and as renumbered by Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7103), is amended to read as follows:

Section 7103. 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,
- b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,
- c. teacher of any child under the age of eighteen (18) years, and
- 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 the child by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual 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. Such reports may be made by telephone, in writing, personally or by any other method prescribed by the Department. Any report of abuse or neglect made pursuant to this section shall be made in good faith.

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.

3. No privilege or contract shall relieve any person included in paragraph 1 of this subsection from the requirement of reporting pursuant to this section.

4. The reporting obligations under this section are individual, and no employer, supervisor or administrator shall impede or inhibit the reporting obligations. No employer, supervisor or administrator of a person required to provide information pursuant to this section shall discharge, or in any manner discriminate or retaliate against, any such person who in good faith provides such child abuse reports or information, testifies, or is about to testify in any proceeding involving child abuse or neglect; provided, that such person did not perpetrate or inflict such abuse or neglect. Any such employer, supervisor or administrator who discharges, discriminates or retaliates against such person shall be liable for damages, costs and attorney fees. Internal procedures to facilitate reporting and apprise employers, supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this section.

5. Every physician or surgeon making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse, sexual abuse, or neglect and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, or other

records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.

B. If the report is not made in writing in the first instance, it shall be reduced to writing by the Department of Human Services, in accordance with rules promulgated by the Commission for Human Services, as soon as may be after it is initially made by telephone or otherwise and shall contain the following information:

1. The names and addresses of the child and the child's parents or other persons responsible for the child's care;

2. The child's age;

3. The nature and extent of the child's injuries, including any evidence of previous injuries;

4. The nature and extent of the child's dependence on a controlled dangerous substance; and

5. 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. Any person who knowingly and willfully fails to promptly report any incident as provided in this section may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

D. 1. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

2. If a court determines that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose a fine, not to exceed Five Thousand Dollars (\$5,000.00) and reasonable attorney fees incurred in recovering the sanctions, against the person making the accusation. The remedy provided by this paragraph is in addition to paragraph 1 of this subsection or to any other remedy provided by law.

E. 1. Nothing in this section shall be construed to mean a child is abused or neglected for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

F. Nothing contained in this section shall be construed to exempt or prohibit any person from reporting any suspected child abuse or neglect pursuant to subsection A of this section.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 848, as amended by Section 13, Chapter 353, O.S.L. 1995 and as renumbered by Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1996, Section 7113), is amended to read as follows:

Section 7113. In any court proceeding resulting from a report made pursuant to the provisions of the Oklahoma Child Abuse Report and Prevention Act or in any court proceeding where such a report or any contents of the report are sought to be introduced into

evidence, such report, contents, or other fact related thereto or to the condition of the child or victim who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure. For purposes of this section, "court proceeding" shall mean any preliminary hearing, jury or nonjury trial, or any other proceeding at which evidence may be introduced by the state.

SECTION 5. 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 27th day of February, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate