ENGROSSED HOUSE
BILL NO. 2252

By: Boyd (Laura), Easley and Ostrander of the House

and

Hendrick of the Senate

An Act relating to crimes and punishments; amending 21 O.S. 1991, Section 843.1, as amended by Section 247, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 843.1), which relates to caretaker abuse; prohibiting certain conduct by caretakers; scheduling offenses; amending 43A O.S. 1991, Section 10-103, as last amended by Section 6, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-103), which relates to protective services for vulnerable adults; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 843.1, as amended by Section 247, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 843.1), is amended to read as follows:

Section 843.1 A. No caretaker as defined in Section ~~803~~ 10-103 of Title 43A of the Oklahoma Statutes shall willfully abuse, neglect, or commit sexual abuse, as that term is defined in Section 10-103 of Title 43A of the Oklahoma Statutes, or financially exploit

any person entrusted ~~in his~~ to the care of the caretaker, or shall cause, secure, or permit any of said acts to be done.

B. Any person convicted of violating the provisions of this section shall be guilty of a felony, punishable as a Schedule C offense unless the abuse is sexual abuse. Any person convicted of violating the provisions of this section by committing sexual abuse shall be guilty of a felony, punishable as a Schedule S-1 felony. The fine for a violation of this section shall not be more than Ten Thousand Dollars ($10,000.00).

C. Consent shall not be a defense for any violation of this section.

SECTION 2. AMENDATORY 43A O.S. 1991, Section 10-103, as last amended by Section 6, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-103), is amended to read as follows:

Section 10-103. When used in the Protective Services for Vulnerable Adults Act:

1. "Protective services" means services which are necessary to aid a vulnerable adult in meeting the essential requirements for mental or physical health and safety which such person is unable to provide or obtain without assistance and includes services provided to or obtained for such person in order to prevent or remedy the abuse, neglect, or exploitation of such person;

2. "Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" include but shall not be limited to the identification of vulnerable adults in need of the services, the provision of medical care for physical and mental health needs, provision of social services assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, guardianship referral, outreach and transportation necessary to secure any of such needs. The term shall not include taking the person into physical custody

without the consent of the person except as provided for in Section 10-107 of this title, and evaluation, monitoring, and provision of protective placements;

3. "Meet essential requirements for mental or physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which physical injury or illness is likely to occur;

4. "Incapacitated person" means any person eighteen (18) years of age or older who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that they lack the capacity to manage their financial resources or to meet essential requirements for their mental or physical health or safety without assistance from others;

5. "Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity or other disability, is substantially impaired in the ability to provide adequately for the care or custody of self, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect self from abuse, neglect, or exploitation without assistance from others;

6. "Caretaker" means a person who has the responsibility for the care of the person or financial management of the resources of the vulnerable adult as a result of a family relationship or who has assumed the responsibility for the care of the vulnerable adult voluntarily, by contract, or as a result of the ties of friendship;

7. "Department" means the Department of Human Services;

8. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing,

shelter, or medical care to a vulnerable adult by a caretaker or other person responsible for providing these services;

9. "Exploitation" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense; ~~and~~

10. "Neglect" means the failure to provide protection for a vulnerable adult who is unable to protect the person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury; and

11. "Sexual abuse" means oral, anal, or vaginal penetration by or union with the sexual organ of another, or the anal or vaginal penetration of another by any other object or, for the purpose of sexual gratification, the touching or feeling of the body or private parts of another.

SECTION 3. This act shall become effective November 1, 1998.

Passed the House of Representatives the 26th day of February, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate