

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1401

By: Wesselhoft

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; creating  
8 the Oklahoma Child Protection Act; making legislative  
9 findings; establishing purpose; defining terms;  
10 requiring certain individual to report certain abuse  
11 against a child; requiring report to be made within  
12 certain time period; requiring certain information be  
13 included in report; making certain violation a  
14 misdemeanor; requiring the preservation of fetal  
15 tissue extracted during abortion of certain  
16 individuals; directing Attorney General to adopt  
17 rules and regulations relating to fetal tissue;  
18 making certain violations a misdemeanor and felony;  
19 prohibiting person from assisting child in obtaining  
20 abortion without notice and consent; providing for  
21 civil liability; permitting court to enjoin certain  
22 conduct; providing for certain intervention in  
23 litigation; providing for codification; and providing  
24 an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 1-740A.1 of Title 63, unless  
there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Child  
Protection Act".

1           SECTION 2.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-740A.2 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4           A. The Legislature of the State of Oklahoma finds that:

5           1. Children are increasingly being preyed upon, victimized, and  
6 coerced into illegal sexual relationships by adults;

7           2. Oklahoma law requires caretakers, health care facilities,  
8 health care providers, teachers, and other specified individuals to  
9 report suspected incidents of sexual crimes against children;

10          3. However, many of these suspected criminal acts go unreported  
11 and perpetrators are not investigated or prosecuted;

12          4. Oklahoma may better prevent future sexual crimes against  
13 children by investigating, prosecuting, incarcerating, and treating  
14 those who prey upon and victimize children;

15          5. To prevent future and continuing sexual crimes against  
16 children, all crimes of this nature must be reported to state  
17 investigators and state agencies that are specifically trained and  
18 equipped to professionally, thoroughly, and compassionately  
19 investigate cases of suspected crimes against children, relieving  
20 mandatory reporters of this responsibility;

21          6. The physical, emotional, developmental, and psychological  
22 impact of sexual crimes on child victims can be severe and long-  
23 lasting;

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1           7. The societal costs of these crimes are also significant and  
2 affect the entire populace;

3           8. The collection, maintenance, and preservation of evidence,  
4 including forensic tissue samples, furthers Oklahoma's interest in  
5 protecting children from sexual crimes and provides the state with  
6 the tools necessary for successful investigations and prosecutions;

7           9. Parents and guardians have both the right and responsibility  
8 to be involved in medical treatment decisions involving their child  
9 or children and no one has the right to knowingly or willfully  
10 impede or circumvent this right;

11           10. There are documented cases of individuals other than a  
12 parent or guardian aiding, abetting, and assisting minor girls to  
13 procure abortions without their parents' or guardians' knowledge,  
14 consent, or involvement. This includes transporting children across  
15 state lines to avoid parental involvement requirements in the  
16 child's home state; and

17           11. Such actions violate both the sanctity of the familial  
18 relationship and Oklahoma's notice and consent law for abortion.

19           B. The Legislature's purposes in enacting the Oklahoma Child  
20 Protection Act are to further the important and compelling state  
21 interests of:

22           1. Protecting children from sexually predatory adults;  
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1           2. Ensuring that adults who are involved in illegal sexual  
2 relationships or contact with children are reported, investigated,  
3 and, when warranted, prosecuted;

4           3. Relieving medical professionals and other mandatory  
5 reporters of suspected sexual crimes against children from any  
6 responsibility to personally investigate an allegation or suspicion.  
7 Mandatory reporters must simply report allegations, suspicions, and  
8 pertinent facts. Trained law enforcement or social services  
9 personnel will then be responsible for any investigation and for the  
10 ultimate disposition of the allegation or case;

11           4. Reducing the physical, emotional, developmental, and  
12 psychological impact of sexual crimes on child victims;

13           5. Reducing the societal and economic burden on the populace  
14 that results from sexual crimes against children;

15           6. Providing law enforcement officials with the tools and  
16 evidence necessary to investigate and prosecute child predators; and

17           7. Protecting and respecting the right of parents and guardians  
18 to be involved in the medical decisions and treatment of their child  
19 or children and preventing anyone from knowingly or willfully  
20 subverting or circumventing those rights.

21           SECTION 3.           NEW LAW           A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-740A.3 of Title 63, unless  
23 there is created a duplication in numbering, reads as follows:

24           For the purposes of the Oklahoma Child Protection Act:

1           1. "Abuse" means the involvement of a child in any sexual act  
2 with a parent or another adult; any sexual activity involving a  
3 child under the age of twelve (12); the aiding or toleration of a  
4 parent or caretaker of the child's sexual involvement with any other  
5 adult; the child's involvement in pornographic displays; or any  
6 other involvement of a child in sexual activity constituting a crime  
7 under the laws of this state;

8           2. "Adult" means one who has attained the age of eighteen (18);

9           3. "Caretaker" means any person legally obligated to provide or  
10 secure adequate care for the child, including a parent, guardian,  
11 tutor, legal custodian, foster home parent, or anyone else providing  
12 the child with a residence;

13           4. "Child" or "children" means anyone under the age of eighteen  
14 (18);

15           5. "Child pornography" means explicit child pornography as  
16 defined in Section 1024.1 of Title 21 of the Oklahoma Statutes;

17           6. "Coercion" means restraining or dominating the choice of a  
18 child by force, threat of force, or deprivation of food and shelter;

19           7. "Mandatory reporter" means any of the following individuals  
20 performing their occupational duties:

- 21           a. "health practitioner" means any individual who  
22               provides health care services, including a physician,  
23               surgeon, physical therapist, psychiatrist,  
24               psychologist, medical resident, medical intern,

1 hospital staff member, licensed nurse, nurse's aid,  
2 any emergency medical technician, paramedic, and any  
3 employee, staff member, or volunteer at a reproductive  
4 healthcare facility,

5 b. "member of the clergy" means any priest, rabbi, duly  
6 ordained deacon, or minister, except that he or she is  
7 not required to report a confidential communication  
8 that is protected as a function of the church, but  
9 must then encourage that person to come forward and  
10 report the allegations to the proper authorities,

11 c. "teaching or child care provider" means anyone who  
12 provides training and supervision of a child,  
13 including any public or private school teacher,  
14 teacher's aide, public or private school principal,  
15 public or private school staff member, social worker,  
16 probation officer, foster home parent, group home or  
17 other child care institutional staff member, personnel  
18 of residential home facilities, a licensed or  
19 unlicensed day care provider, or any individual who  
20 provides such services to a child,

21 d. "police officers or law enforcement officials,

22 e. "commercial film and photographic print processor" is  
23 any person who develops exposed photographic film into  
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1 negatives, slides, or prints, or who makes prints from  
2 negatives or slides for compensation,

3 f. "physician" means any person licensed to practice  
4 medicine in this state. The term includes medical  
5 doctors and doctors of osteopathy, and

6 g. "reproductive healthcare facility" means any office,  
7 clinic, or any other physical location that provides  
8 abortions, abortion counseling, abortion referrals,  
9 contraceptives, contraceptive counseling, sex  
10 education, or gynecological care and services;

11 8. For the purposes of the Oklahoma Child Protection Act only,  
12 "abortion" means the act of using or prescribing any instrument,  
13 medicine, drug, or any other substance, device, or means with the  
14 intent to terminate the clinically diagnosable pregnancy of a woman  
15 with knowledge that the termination by those means will with  
16 reasonable likelihood cause the death of the unborn child. Such  
17 use, prescription, or means is not an abortion if done with the  
18 intent to:

19 a. save the life or preserve the health of an unborn  
20 child,

21 b. remove a dead unborn child caused by spontaneous  
22 abortion, or

23 c. remove an ectopic pregnancy; and  
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1 9. "Sexual abuse" means any sexual conduct, sexual contact, or  
2 sexual penetration as defined in Section 1-1-105 of Title 10A of the  
3 Oklahoma Statutes and committed against a child by an adult or  
4 involving a child under the age of twelve (12).

5 SECTION 4. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 1-740A.4 of Title 63, unless  
7 there is created a duplication in numbering, reads as follows:

8 A mandatory reporter must report every instance of alleged or  
9 suspected abuse, sexual abuse, or sexual crimes against a child as  
10 defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes.  
11 The mandatory reporter may not use his or her discretion in deciding  
12 what cases should or should not be reported to the appropriate law  
13 enforcement or designated state agencies.

14 SECTION 5. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 1-740A.5 of Title 63, unless  
16 there is created a duplication in numbering, reads as follows:

17 If a mandatory reporter has cause to believe that a child has  
18 been abused, sexually abused, or has been the victim of a sexual  
19 crime as defined in Section 1-1-105 of Title 10A of the Oklahoma  
20 Statutes, the mandatory reporter shall make a report no later than  
21 the 48th hour after the abuse, sexual abuse, or crime has been  
22 brought to his or her attention or he or she suspects the abuse,  
23 sexual abuse, or crime. A mandatory reporter shall not delegate the  
24 responsibility to report the abuse, sexual abuse, or crime to any

1 other person but must personally make the report. The mandatory  
2 reporter must make a report to the Department of Human Services.

3 SECTION 6. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1-740A.6 of Title 63, unless  
5 there is created a duplication in numbering, reads as follows:

6 The person making the report must identify the name and address  
7 of the child as well as the name and address of the person or  
8 persons responsible for the care or custody of the child. The  
9 person making the report must also file any pertinent information he  
10 or she may have relating to the alleged or suspected abuse, sexual  
11 abuse, or sexual crime.

12 SECTION 7. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1-740A.7 of Title 63, unless  
14 there is created a duplication in numbering, reads as follows:

15 Any mandatory reporter who has reason to believe that a child's  
16 physical or mental health or welfare has been adversely affected  
17 because of abuse, sexual abuse, or a sexual crime and does not  
18 report such abuse, sexual abuse, or sexual crime as provided by this  
19 act shall be guilty of a misdemeanor.

20 SECTION 8. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 1-740A.8 of Title 63, unless  
22 there is created a duplication in numbering, reads as follows:

23 A. Any physician who performs an abortion on a child who is  
24 less than fourteen (14) years of age at the time of the abortion

1 procedure shall preserve, in accordance with rules and regulations  
2 adopted by the Office of the Attorney General pursuant to the  
3 Oklahoma Child Protection Act, fetal tissue extracted during such  
4 abortion. The physician shall submit such tissue to the Oklahoma  
5 State Bureau of Investigation.

6 B. The Office of the Attorney General shall adopt rules and  
7 regulations prescribing:

8 1. The amount and type of fetal tissue to be preserved and  
9 submitted by a physician pursuant to this section;

10 2. Procedures for the proper preservation of such tissue for  
11 the purpose of DNA testing and examination;

12 3. Procedures for documenting the chain of custody of such  
13 tissue for use as evidence;

14 4. Procedures for proper disposal of fetal tissue preserved  
15 pursuant to this section;

16 5. A uniform reporting instrument mandated to be utilized by  
17 physicians when submitting fetal tissue under this section which  
18 shall include the name and address of the physician submitting the  
19 fetal tissue and the name and complete address of residence of the  
20 parent or legal guardian of the child upon whom the abortion was  
21 performed; and

22 6. Procedures for communication with law enforcement agencies  
23 regarding evidence and information obtained pursuant to this  
24 section.

1 C. Failure of a physician to comply with any provision of this  
2 section or any rule or regulation adopted thereunder:

3 1. Shall constitute unprofessional conduct for the purposes of  
4 Section 509.1 of Title 59 of the Oklahoma Statutes; and

5 2. Is a misdemeanor for a first offense and a felony upon a  
6 second or subsequent conviction.

7 SECTION 9. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1-740A.9 of Title 63, unless  
9 there is created a duplication in numbering, reads as follows:

10 A. No person shall intentionally cause, aid, or assist a child  
11 to obtain an abortion without notice and consent required by Section  
12 1-740.2 of Title 63 of the Oklahoma Statutes.

13 B. A person who violates subsection A of this section shall be  
14 civilly liable to the child and to the person or persons required to  
15 give the notice and receive the notice under Section 1-740.2 of  
16 Title 63 of the Oklahoma Statutes. A court may award damages to the  
17 person or persons adversely affected by a violation of subsection A  
18 of this section, including compensation for emotional injury without  
19 the need for personal presence at the act or event, and the court  
20 may further award attorney fees, litigation costs, and punitive  
21 damages. Any adult who engages in or consents to another person  
22 engaging in a sexual act with a child, which results in the child's  
23 pregnancy, shall not be awarded damages under this section.

1 C. It shall not be a defense to a claim brought under this  
2 section that the abortion was performed or induced pursuant to  
3 consent to the abortion given in a manner that is otherwise lawful  
4 in the state or place where the abortion was performed or induced.

5 D. An unemancipated child does not have capacity to consent to  
6 any action in violation of this section.

7 E. A court of competent jurisdiction may enjoin conduct that  
8 would be in violation of this section upon petition by the Attorney  
9 General, a prosecuting or district attorney, or any person adversely  
10 affected or who reasonably may be adversely affected by such  
11 conduct, upon a showing that such conduct:

12 1. Is reasonably anticipated to occur in the future; or

13 2. Has occurred in the past, whether with the same child or  
14 others, and that it is not unreasonable to expect that such conduct  
15 will be repeated.

16 SECTION 10. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 1-740A.10 of Title 63, unless  
18 there is created a duplication in numbering, reads as follows:

19 The Legislature, by joint resolution, may appoint one or more of  
20 its members, who sponsored or cosponsored the Oklahoma Child  
21 Protection Act in his or her official capacity, to intervene as a  
22 matter of right in any case in which the constitutionality of this  
23 law is challenged.

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SECTION 11. This act shall become effective November 1, 2011.

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