

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2512

By: Billy

AS INTRODUCED

An Act relating to crimes and punishments; 21 O.S. 2011, Section 843.5, as amended by Section 1, Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2015, Section 843.5), which relates to penalties for child abuse; providing duress by abuse defense for persons accused of certain crimes; providing evidentiary requirements; stating alternative punishment for persons who successfully assert duress by abuse defense; providing an exception; providing procedures and guidelines for needs assessments and recovery plans; stating time limitation for completion of recovery plan; stating penalty for persons who unsuccessfully complete recovery plan; providing requirements for creating needs assessments and recovery plans; authorizing the filing of petitions for post-conviction relief under certain circumstances; directing alleged perpetrators of abuse to pay certain costs; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 843.5, as amended by Section 1, Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2015, Section 843.5), is amended to read as follows:

Section 843.5 A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon

1 conviction, be guilty of a felony punishable by imprisonment in the  
2 custody of the Department of Corrections not exceeding life  
3 imprisonment, or by imprisonment in a county jail not exceeding one  
4 (1) year, or by a fine of not less than Five Hundred Dollars  
5 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both  
6 such fine and imprisonment. As used in this subsection, "child  
7 abuse" means the willful or malicious harm or threatened harm or  
8 failure to protect from harm or threatened harm to the health,  
9 safety, or welfare of a child under eighteen (18) years of age by  
10 another, or the act of willfully or maliciously injuring, torturing  
11 or maiming a child under eighteen (18) years of age by another.

12 B. Any parent or other person who shall willfully or  
13 maliciously engage in enabling child abuse shall, upon conviction,  
14 be punished by imprisonment in the custody of the Department of  
15 Corrections not exceeding life imprisonment, or by imprisonment in a  
16 county jail not exceeding one (1) year, or by a fine of not less  
17 than Five Hundred Dollars (\$500.00) nor more than Five Thousand  
18 Dollars (\$5,000.00) or both such fine and imprisonment. As used in  
19 this subsection, "enabling child abuse" means the causing, procuring  
20 or permitting of a willful or malicious act of harm or threatened  
21 harm or failure to protect from harm or threatened harm to the  
22 health, safety, or welfare of a child under eighteen (18) years of  
23 age by another. As used in this subsection, "permit" means to  
24 authorize or allow for the care of a child by an individual when the

1 person authorizing or allowing such care knows or reasonably should  
2 know that the child will be placed at risk of abuse as proscribed by  
3 this subsection.

4 C. Any parent or other person who shall willfully or  
5 maliciously engage in child neglect shall, upon conviction, be  
6 punished by imprisonment in the custody of the Department of  
7 Corrections not exceeding life imprisonment, or by imprisonment in a  
8 county jail not exceeding one (1) year, or by a fine of not less  
9 than Five Hundred Dollars (\$500.00) nor more than Five Thousand  
10 Dollars (\$5,000.00), or both such fine and imprisonment. As used in  
11 this subsection, "child neglect" means the willful or malicious  
12 neglect, as defined by paragraph 47 of Section 1-1-105 of Title 10A  
13 of the Oklahoma Statutes, of a child under eighteen (18) years of  
14 age by another.

15 D. Any parent or other person who shall willfully or  
16 maliciously engage in enabling child neglect shall, upon conviction,  
17 be punished by imprisonment in the custody of the Department of  
18 Corrections not exceeding life imprisonment, or by imprisonment in a  
19 county jail not exceeding one (1) year, or by a fine of not less  
20 than Five Hundred Dollars (\$500.00) nor more than Five Thousand  
21 Dollars (\$5,000.00), or both such fine and imprisonment. As used in  
22 this subsection, "enabling child neglect" means the causing,  
23 procuring or permitting of a willful or malicious act of child  
24 neglect, as defined by paragraph 47 of Section 1-1-105 of Title 10A

1 of the Oklahoma Statutes, of a child under eighteen (18) years of  
2 age by another. As used in this subsection, "permit" means to  
3 authorize or allow for the care of a child by an individual when the  
4 person authorizing or allowing such care knows or reasonably should  
5 know that the child will be placed at risk of neglect as proscribed  
6 by this subsection.

7 E. Any parent or other person who shall willfully or  
8 maliciously engage in child sexual abuse shall, upon conviction, be  
9 punished by imprisonment in the custody of the Department of  
10 Corrections not exceeding life imprisonment, or by imprisonment in a  
11 county jail not exceeding one (1) year, or by a fine of not less  
12 than Five Hundred Dollars (\$500.00) nor more than Five Thousand  
13 Dollars (\$5,000.00), or both such fine and imprisonment, except as  
14 provided in Section 51.1a of this title or as otherwise provided in  
15 subsection F of this section for a child victim under twelve (12)  
16 years of age. Except for persons sentenced to life or life without  
17 parole, any person sentenced to imprisonment for two (2) years or  
18 more for a violation of this subsection shall be required to serve a  
19 term of post-imprisonment supervision pursuant to subparagraph f of  
20 paragraph 1 of subsection A of Section 991a of Title 22 of the  
21 Oklahoma Statutes under conditions determined by the Department of  
22 Corrections. The jury shall be advised that the mandatory post-  
23 imprisonment supervision shall be in addition to the actual  
24 imprisonment. As used in this section, "child sexual abuse" means

1 the willful or malicious sexual abuse, which includes but is not  
2 limited to rape, incest, and lewd or indecent acts or proposals, of  
3 a child under eighteen (18) years of age by another.

4 F. Any parent or other person who shall willfully or  
5 maliciously engage in sexual abuse to a child under twelve (12)  
6 years of age shall, upon conviction, be punished by imprisonment in  
7 the custody of the Department of Corrections for not less than  
8 twenty-five (25) years nor more than life imprisonment, and by a  
9 fine of not less than Five Hundred Dollars (\$500.00) nor more than  
10 Five Thousand Dollars (\$5,000.00).

11 G. Any parent or other person who shall willfully or  
12 maliciously engage in enabling child sexual abuse shall, upon  
13 conviction, be punished by imprisonment in the custody of the  
14 Department of Corrections not exceeding life imprisonment, or by  
15 imprisonment in a county jail not exceeding one (1) year, or by a  
16 fine of not less than Five Hundred Dollars (\$500.00) nor more than  
17 Five Thousand Dollars (\$5,000.00), or both such fine and  
18 imprisonment. As used in this subsection, "enabling child sexual  
19 abuse" means the causing, procuring or permitting of a willful or  
20 malicious act of child sexual abuse, which includes but is not  
21 limited to rape, incest, and lewd or indecent acts or proposals, of  
22 a child under the age of eighteen (18) by another. As used in this  
23 subsection, "permit" means to authorize or allow for the care of a  
24 child by an individual when the person authorizing or allowing such

1 care knows or reasonably should know that the child will be placed  
2 at risk of sexual abuse as proscribed by this subsection.

3 H. Any parent or other person who shall willfully or  
4 maliciously engage in child sexual exploitation shall, upon  
5 conviction, be punished by imprisonment in the custody of the  
6 Department of Corrections not exceeding life imprisonment, or by  
7 imprisonment in a county jail not exceeding one (1) year, or by a  
8 fine of not less than Five Hundred Dollars (\$500.00) nor more than  
9 Five Thousand Dollars (\$5,000.00), or both such fine and  
10 imprisonment except as provided in subsection I of this section for  
11 a child victim under twelve (12) years of age. Except for persons  
12 sentenced to life or life without parole, any person sentenced to  
13 imprisonment for two (2) years or more for a violation of this  
14 subsection shall be required to serve a term of post-imprisonment  
15 supervision pursuant to subparagraph f of paragraph 1 of subsection  
16 A of Section 991a of Title 22 of the Oklahoma Statutes under  
17 conditions determined by the Department of Corrections. The jury  
18 shall be advised that the mandatory post-imprisonment supervision  
19 shall be in addition to the actual imprisonment. As used in this  
20 subsection, "child sexual exploitation" means the willful or  
21 malicious sexual exploitation, which includes but is not limited to  
22 allowing, permitting, or encouraging a child under eighteen (18)  
23 years of age to engage in prostitution or allowing, permitting,  
24 encouraging or engaging in the lewd, obscene or pornographic

1 photographing, filming, or depicting of a child under eighteen (18)  
2 years of age by another.

3 I. Any parent or other person who shall willfully or  
4 maliciously engage in sexual exploitation of a child under twelve  
5 (12) years of age shall, upon conviction, be punished by  
6 imprisonment in the custody of the Department of Corrections for not  
7 less than twenty-five (25) years nor more than life imprisonment,  
8 and by a fine of not less than Five Hundred Dollars (\$500.00) nor  
9 more than Five Thousand Dollars (\$5,000.00).

10 J. Any parent or other person who shall willfully or  
11 maliciously engage in enabling child sexual exploitation shall, upon  
12 conviction, be punished by imprisonment in the custody of the  
13 Department of Corrections not exceeding life imprisonment, or by  
14 imprisonment in a county jail not exceeding one (1) year, or by a  
15 fine of not less than Five Hundred Dollars (\$500.00) nor more than  
16 Five Thousand Dollars (\$5,000.00), or both such fine and  
17 imprisonment. As used in this subsection, "enabling child sexual  
18 exploitation" means the causing, procuring or permitting of a  
19 willful or malicious act of child sexual exploitation, which  
20 includes but is not limited to allowing, permitting, or encouraging  
21 a child under eighteen (18) years of age to engage in prostitution  
22 or allowing, permitting, encouraging or engaging in the lewd,  
23 obscene or pornographic photographing, filming, or depicting of a  
24 child under eighteen (18) years of age by another. As used in this

1 subsection, "permit" means to authorize or allow for the care of a  
2 child by an individual when the person authorizing or allowing such  
3 care knows or reasonably should know that the child will be placed  
4 at risk of sexual exploitation as proscribed by this subsection.

5 K. Notwithstanding any other provision of law, any parent or  
6 other person convicted of forcible anal or oral sodomy, rape, rape  
7 by instrumentation, or lewd molestation of a child under fourteen  
8 (14) years of age subsequent to a previous conviction for any  
9 offense of forcible anal or oral sodomy, rape, rape by  
10 instrumentation, or lewd molestation of a child under fourteen (14)  
11 years of age shall be punished by death or by imprisonment for life  
12 without parole.

13 L. Provided, however, that nothing contained in this section  
14 shall prohibit any parent or guardian from using reasonable and  
15 ordinary force pursuant to Section 844 of this title.

16 M. A person who is charged with willfully or maliciously  
17 engaging in enabling child abuse, enabling child neglect, enabling  
18 child sexual abuse or enabling child sexual exploitation pursuant to  
19 the provisions of this section shall be entitled to assert the  
20 defense of duress by abuse if the person had a reasonable  
21 apprehension that acting to stop or prevent the child abuse, child  
22 neglect, child sexual abuse or child sexual exploitation would  
23 result in imminent intimate partner abuse to himself or herself or  
24 to a minor child in retaliation.

1        N. Duress by abuse may be shown by direct or indirect evidence  
2 including, but not limited to, medical testimony or evidence, expert  
3 testimony by a psychologist, psychiatrist, other expert witness or  
4 any combination thereof.

5        O. A person found guilty of willfully or maliciously engaging  
6 in enabling child abuse, enabling child neglect, enabling child  
7 sexual abuse or enabling child sexual exploitation who successfully  
8 asserts the defense of duress by abuse shall be ordered by the court  
9 to participate and complete a needs assessment and recovery plan in  
10 lieu of a conviction and punishment. Provided, the court shall not  
11 order the person to participate and complete the needs assessment  
12 and recovery plan if the person refuses to cooperate in the criminal  
13 proceedings or the court makes specific findings that having the  
14 person participate and complete the needs assessment and recovery  
15 plan in lieu of a conviction and punishment would create an undue  
16 risk to public safety or the health, safety and welfare of the  
17 victim.

18        P. A recovery plan shall not exceed two (2) years in length and  
19 shall consist of medical, social and psychological services as may  
20 be deemed beneficial to aid the person in the cessation of  
21 victimization, recovery from mental or physical abuse trauma or  
22 other needs identified bearing connection with the alleged abuse  
23 suffered by the person.

1       Q. 1. If a needs assessment and recovery plan is ordered by  
2 the court, the person shall have two (2) years to complete the  
3 court-approved recovery plan under the deferred sentencing procedure  
4 provided for in Section 991c of Title 22 of the Oklahoma Statutes.  
5 The court may extend this time if the court determines that it is  
6 reasonable and necessary for the person to successfully complete the  
7 recovery plan.

8       2. Should the person fail to complete the recovery plan within  
9 two (2) years or if the person commits or enables the commission of  
10 any subsequent crime of child abuse, child neglect, child sexual  
11 abuse or child sexual exploitation, the person shall be sentenced  
12 for the offense as provided for in the provisions of this section.

13       3. The needs assessment and recovery plan program shall be  
14 created by a private facility or organization that has been  
15 certified by the Office of the Attorney General as a certified  
16 domestic violence program or certified sexual assault program  
17 pursuant to the provisions of Section 18p-6 of Title 74 of the  
18 Oklahoma Statutes and shall be filed with the court. In  
19 consultation with the Department of Human Services, the recovery  
20 plan shall address the recovery needs of any child associated with  
21 or living in the home of the person including home visitations by  
22 personnel of the Department of Human Services.

23       R. Any person convicted of a misdemeanor or felony under the  
24 provisions of subsections B, D, G or J of this section who, prior to

1 the effective date of this act, would have been authorized to assert  
2 the defense of abuse by duress may file a petition for post-  
3 conviction relief without regard to the limitations of Section 1086  
4 of Title 22 of the Oklahoma Statutes so long as the petition for  
5 post-conviction relief is filed within five (5) years of the  
6 effective date of this act. Upon filing the petition for post-  
7 conviction relief, the court shall retroactively apply the  
8 provisions of subsections M, N, O, P and Q of this section.

9 S. The person accused of abusing the individual charged under  
10 the provisions of subsection B, D, G or J of this section shall be  
11 required to cover all costs of the needs assessment and recovery  
12 plan of the individual charged.

13 T. As used in this section, "intimate partner abuse" means a  
14 pattern or series of actions or omissions and verbal or nonverbal  
15 communication that are used to harm another person physically or  
16 mentally or to exert power and control over another person.

17 Intimate partner abuse may include one or more of the following  
18 acts:

- 19 1. Physical violence;
  - 20 2. Sexual violence;
  - 21 3. Stalking;
  - 22 4. Psychological aggression; or
  - 23 5. Use of coercive tactics.
- 24

1 Intimate partner abuse may be committed by a current or former  
2 spouse, boyfriend, girlfriend or ongoing sexual partner.

3 SECTION 2. This act shall become effective November 1, 2016.

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