

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2719

By: Virgin

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending 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 child abuse; allowing defense of duress for specified offenses; prohibiting sentence for enabling that exceeds sentence of actual perpetrator; authorizing request for modification of the sentence; directing modification of sentence to comply with prohibition; 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 conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections 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

1 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
2 such fine and imprisonment. As used in this subsection, "child
3 abuse" means the willful or malicious harm or threatened harm or
4 failure to protect from harm or threatened harm to the health,
5 safety, or welfare of a child under eighteen (18) years of age by
6 another, or the act of willfully or maliciously injuring, torturing
7 or maiming a child under eighteen (18) years of age by another.

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

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

12 D. Any parent or other person who shall willfully or
13 maliciously engage in enabling child neglect 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 neglect" means the causing,
20 procuring or permitting of a willful or malicious act of child
21 neglect, as defined by paragraph 47 of Section 1-1-105 of Title 10A
22 of the Oklahoma Statutes, 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 neglect as proscribed
3 by this subsection.

4 E. Any parent or other person who shall willfully or
5 maliciously engage in child sexual abuse 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, except as
11 provided in Section 51.1a of this title or as otherwise provided in
12 subsection F of this section for a child victim under twelve (12)
13 years of age. Except for persons sentenced to life or life without
14 parole, any person sentenced to imprisonment for two (2) years or
15 more for a violation of this subsection shall be required to serve a
16 term of post-imprisonment supervision pursuant to subparagraph f of
17 paragraph 1 of subsection A of Section 991a of Title 22 of the
18 Oklahoma Statutes under conditions determined by the Department of
19 Corrections. The jury shall be advised that the mandatory post-
20 imprisonment supervision shall be in addition to the actual
21 imprisonment. As used in this section, "child sexual abuse" means
22 the willful or malicious sexual abuse, which includes but is not
23 limited to rape, incest, and lewd or indecent acts or proposals, of
24 a child under eighteen (18) years of age by another.

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

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

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

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

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

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

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

14 M. Any parent or other person charged with an offense
15 prohibited by this section may assert the defense of duress pursuant
16 to Section 156 of this title.

17 N. Any parent or other person convicted of enabling an act
18 prohibited by this section shall not be sentenced to a penalty that
19 exceeds the penalty received by the actual perpetrator of the act.
20 The parent or other person convicted of enabling an act prohibited
21 by this section may request a modification of the sentence pursuant
22 to Section 982a of Title 22 of the Oklahoma Statutes and the court
23 shall modify the sentence to ensure compliance with this subsection.
24

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

55-2-9343 GRS 02/24/16