

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2719

By: Virgin

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8 COMMITTEE SUBSTITUTE

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10 An Act relating to crimes and punishments; amending
11 21 O.S. 2011, Section 843.5, as amended by Section 1,
12 Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2015, Section
13 843.5), which relates to child abuse; allowing
14 defense of duress for specified offenses; prohibiting
15 sentence for enabling that exceeds sentence of actual
16 perpetrator; authorizing request for modification of
17 the sentence; directing modification of sentence to
18 comply with prohibition; and providing an effective
19 date.

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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

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

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

1 know that the child will be placed at risk of abuse as proscribed by
2 this subsection.

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

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

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

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

1 limited to rape, incest, and lewd or indecent acts or proposals, of
2 a child under eighteen (18) years of age by another.

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

10 G. Any parent or other person who shall willfully or
11 maliciously engage in enabling child sexual abuse 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 abuse" means the causing, procuring or permitting of a willful or
19 malicious act of child sexual abuse, which includes but is not
20 limited to rape, incest, and lewd or indecent acts or proposals, of
21 a child under the age of eighteen (18) by another. As used in this
22 subsection, "permit" means to authorize or allow for the care of a
23 child by an individual when the person authorizing or allowing such

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

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

3 SECTION 2. This act shall become effective November 1, 2016.
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5 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS,
6 dated 02/24/2016 - DO PASS, As Amended.
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