

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 2523

By: West (Tammy) and **Branham**

7 AS INTRODUCED

8 An Act relating to crimes and punishments; amending
9 21 O.S. 2011, Section 843.5, as amended by Section 1,
10 Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2018, Section
11 843.5), which relates to penalties for abuse, neglect
12 and sexual abuse of a child; modifying scope of
 certain prohibited acts; modifying certain defined
 terms; adding definitions; authorizing application
 for postconviction relief; and providing an effective
 date.

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

16 SECTION 1. AMENDATORY 21 O.S. 2011, Section 843.5, as
17 amended by Section 1, Chapter 240, O.S.L. 2014 (21 O.S. Supp. 2018,
18 Section 843.5), is amended to read as follows:

19 Section 843.5 A. Any parent or other person who shall
20 willfully or maliciously engage in child abuse shall, upon
21 conviction, be guilty of a felony punishable by imprisonment in the
22 custody of the Department of Corrections not exceeding life
23 imprisonment, or by imprisonment in a county jail not exceeding one
24 (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~~ failure to protect from child abuse
10 shall, upon conviction, be punished by imprisonment in the custody
11 of the Department of Corrections not exceeding ~~life imprisonment~~
12 four (4) years, or by imprisonment in a county jail not exceeding
13 one (1) year, or by a fine of not ~~less than Five Hundred Dollars~~
14 ~~(\$500.00) nor~~ more than Five Thousand Dollars (\$5,000.00) or both
15 such fine and imprisonment. However, it is an affirmative defense
16 to this subsection if the person had a reasonable apprehension that
17 any action to stop the physical abuse would result in substantial
18 bodily harm to the person or the child.

19 As used in this subsection~~7~~:

20 1. ~~"enabling child abuse~~ Failure to protect" means the ~~causing,~~
21 ~~procuring or permitting of a willful or malicious act of harm or~~
22 ~~threatened harm or failure to protect from harm or threatened harm~~
23 ~~to the health, safety, or welfare~~ take reasonable action to remedy
24 or prevent child abuse, as defined in paragraph 26 of Section 1-1-

1 105 of Title 10A of the Oklahoma Statutes, of a child under eighteen
2 (18) years of age by another. ~~As used in this subsection,~~

3 2. "permit Willful or malicious" means ~~to authorize or allow~~
4 ~~for the care of a child by an individual when the person authorizing~~
5 ~~or allowing such care knows or reasonably should know that the child~~
6 ~~will be placed at risk of abuse as proscribed by this subsection~~
7 with actual knowledge, but in no case shall evidence that the
8 defendant was the victim of domestic abuse be used against him or
9 her to satisfy the actual knowledge element.

10 C. Any parent or other person who shall willfully or
11 maliciously engage in child neglect shall, upon conviction, be
12 punished by imprisonment in the custody of the Department of
13 Corrections not exceeding life imprisonment, or by imprisonment in a
14 county jail not exceeding one (1) year, or by a fine of not less
15 than Five Hundred Dollars (\$500.00) nor more than Five Thousand
16 Dollars (\$5,000.00), or both such fine and imprisonment. As used in
17 this subsection, "child neglect" means the willful or malicious
18 neglect, as defined by paragraph ~~47~~ 48 of Section 1-1-105 of Title
19 10A of the Oklahoma Statutes, of a child under eighteen (18) years
20 of age by another.

21 D. Any parent or other person who shall willfully or
22 maliciously engage in enabling child neglect shall, upon conviction,
23 be punished by imprisonment in the custody of the Department of
24 Corrections not exceeding ~~life imprisonment~~ four (4) years, or by

1 imprisonment in a county jail not exceeding one (1) year, or by a
2 fine of not less than Five Hundred Dollars (\$500.00) nor more than
3 Five Thousand Dollars (\$5,000.00), or both such fine and
4 imprisonment. However, it is an affirmative defense to this
5 subsection if the person had a reasonable apprehension that any
6 action to stop the physical abuse would result in substantial bodily
7 harm to the person or the child.

8 As used in this subsection~~7~~:

9 1. "Enabling child neglect" means ~~the causing, procuring or~~
10 willfully or maliciously permitting of a another to engage in the
11 willful or malicious act of child neglect, as defined by paragraph
12 47 48 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a
13 child under eighteen (18) years of age by another. ~~As used in this~~
14 subsection,

15 2. "~~permit~~ Willfully or maliciously permitting" means to
16 authorize or allow for the care of a child by an individual when the
17 person authorizing or allowing such care ~~knows or reasonably should~~
18 ~~know~~ has actual knowledge that the child will be placed at risk of
19 neglect as proscribed by this subsection, but in no case shall
20 evidence that the defendant was the victim of domestic abuse be used
21 against him or her to satisfy the actual knowledge element.

22 E. Any parent or other person who shall willfully or
23 maliciously engage in child sexual abuse shall, upon conviction, be
24 punished by imprisonment in the custody of the Department of

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

19 F. Any parent or other person who shall willfully or
20 maliciously engage in sexual abuse to a child under twelve (12)
21 years of age shall, upon conviction, be punished by imprisonment in
22 the custody of the Department of Corrections for not less than
23 twenty-five (25) years nor more than life imprisonment, and by a
24

1 fine of not less than Five Hundred Dollars (\$500.00) nor more than
2 Five Thousand Dollars (\$5,000.00).

3 G. Any parent or other person who shall willfully or
4 maliciously engage in enabling child sexual abuse 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. As used in this subsection, "enabling child sexual
11 abuse" means the causing, procuring or permitting of a willful or
12 malicious act of child sexual abuse, which includes but is not
13 limited to rape, incest, and lewd or indecent acts or proposals, of
14 a child under the age of eighteen (18) by another. As used in this
15 subsection, "permit" means to authorize or allow for the care of a
16 child by an individual when the person authorizing or allowing such
17 care knows or reasonably should know that the child will be placed
18 at risk of sexual abuse as proscribed by this subsection.

19 H. Any parent or other person who shall willfully or
20 maliciously engage in child sexual exploitation shall, upon
21 conviction, be punished by imprisonment in the custody of the
22 Department of Corrections not exceeding life imprisonment, or by
23 imprisonment in a county jail not exceeding one (1) year, or by a
24 fine of not less than Five Hundred Dollars (\$500.00) nor more than

1 Five Thousand Dollars (\$5,000.00), or both such fine and
2 imprisonment except as provided in subsection I of this section for
3 a child victim under twelve (12) years of age. Except for persons
4 sentenced to life or life without parole, any person sentenced to
5 imprisonment for two (2) years or more for a violation of this
6 subsection shall be required to serve a term of post-imprisonment
7 supervision pursuant to subparagraph f of paragraph 1 of subsection
8 A of Section 991a of Title 22 of the Oklahoma Statutes under
9 conditions determined by the Department of Corrections. The jury
10 shall be advised that the mandatory post-imprisonment supervision
11 shall be in addition to the actual imprisonment. As used in this
12 subsection, "child sexual exploitation" means the willful or
13 malicious sexual exploitation, which includes but is not limited to
14 allowing, permitting, or encouraging a child under eighteen (18)
15 years of age to engage in prostitution or allowing, permitting,
16 encouraging or engaging in the lewd, obscene or pornographic
17 photographing, filming, or depicting of a child under eighteen (18)
18 years of age by another.

19 I. Any parent or other person who shall willfully or
20 maliciously engage in sexual exploitation of a child under twelve
21 (12) years of age shall, upon conviction, be punished by
22 imprisonment in the custody of the Department of Corrections for not
23 less than twenty-five (25) years nor more than life imprisonment,
24

1 and by a fine of not less than Five Hundred Dollars (\$500.00) nor
2 more than Five Thousand Dollars (\$5,000.00).

3 J. Any parent or other person who shall willfully or
4 maliciously engage in enabling 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. As used in this subsection, "enabling child sexual
11 exploitation" means the causing, procuring or permitting of a
12 willful or malicious act of child sexual exploitation, which
13 includes but is not limited to allowing, permitting, or encouraging
14 a child under eighteen (18) years of age to engage in prostitution
15 or allowing, permitting, encouraging or engaging in the lewd,
16 obscene or pornographic photographing, filming, or depicting of a
17 child under eighteen (18) years of age by another. As used in this
18 subsection, "permit" means to authorize or allow for the care of a
19 child by an individual when the person authorizing or allowing such
20 care knows or reasonably should know that the child will be placed
21 at risk of sexual exploitation as proscribed by this subsection.

22 K. Notwithstanding any other provision of law, any parent or
23 other person convicted of forcible anal or oral sodomy, rape, rape
24 by instrumentation, or lewd molestation of a child under fourteen

1 (14) years of age subsequent to a previous conviction for any
2 offense of forcible anal or oral sodomy, rape, rape by
3 instrumentation, or lewd molestation of a child under fourteen (14)
4 years of age shall be punished by death or by imprisonment for life
5 without parole.

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

9 M. Other provisions of law notwithstanding, any person who
10 committed an offense pursuant to subsection B or D of this section
11 before November 1, 2019, may institute an application for
12 postconviction relief pursuant to the procedures set forth in
13 Section 1080 et seq. of Title 22 of the Oklahoma Statutes. Nothing
14 in this subsection shall be construed to create a civil cause of
15 action related to a change in the law governing an applicant's
16 conviction.

17 SECTION 2. This act shall become effective November 1, 2019.

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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2019 - DO
20 PASS, As Coauthored.