

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 3662

By: Kannady

7 AS INTRODUCED

8 An Act relating to crimes and punishments; amending
9 21 O.S. 2011, Section 843.5, as last amended by
10 Section 1, Chapter 284, O.S.L. 2019 (21 O.S. Supp.
11 2019, Section 843.5), which relates to penalties for
12 child abuse and neglect; deleting certain prohibited
13 acts and related penalties; amending 21 O.S. 2011,
14 Section 1123, as last amended by Section 4, Chapter
15 167, O.S.L. 2018 (21 O.S. Supp. 2019, Section 1123),
16 which relates to penalties for lewd or indecent acts
17 to a child; deleting certain prohibited act and
18 related penalties; making certain acts unlawful;
19 providing penalties; providing for post-imprisonment
20 supervision; defining terms; providing for
21 codification; and providing an effective date.

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

23 SECTION 1. AMENDATORY 21 O.S. 2011, Section 843.5, as
24 last amended by Section 1, Chapter 284, O.S.L. 2019 (21 O.S. Supp.
25 2019, Section 843.5), is amended to read as follows:

26 Section 843.5 A. Any parent or other person who shall
27 willfully or maliciously engage in child abuse shall, upon
28 conviction, be guilty of a felony punishable by imprisonment in the
29 custody of the Department of Corrections not exceeding life

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

10 B. Any parent or other person who shall willfully or
11 maliciously engage in enabling child abuse shall, upon conviction,
12 be 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, "enabling child abuse" means the causing, procuring
18 or permitting of a willful or malicious act of harm or threatened
19 harm or failure to protect from harm or threatened harm to the
20 health, safety, or welfare of a child under eighteen (18) years of
21 age by another. As used in this subsection, "permit" means to
22 authorize or allow for the care of a child by an individual when the
23 person authorizing or allowing such care knows or reasonably should
24

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 Section 1-1-105 of Title 10A of the Oklahoma
12 Statutes, of a child under eighteen (18) years of age by another.

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

1 the care of a child by an individual when the person authorizing or
2 allowing such care knows or reasonably should know that the child
3 will be placed at risk of neglect as proscribed 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 ~~F~~ F of this section
9 for a child victim under twelve (12) years of age. Except for
10 persons sentenced to life or life without parole, any person
11 sentenced to imprisonment for two (2) years or more for a violation
12 of this subsection shall be required to serve a term of post-
13 imprisonment supervision pursuant to subparagraph f of paragraph 1
14 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
15 under conditions determined by the Department of Corrections. The
16 jury shall be advised that the mandatory post-imprisonment
17 supervision shall be in addition to the actual imprisonment. As
18 used in this subsection, "child sexual exploitation" means the
19 willful or malicious sexual exploitation, which includes but is not
20 limited to allowing, permitting, or encouraging a child under
21 eighteen (18) years of age to engage in prostitution or allowing,
22 permitting, encouraging or engaging in the lewd, obscene or
23 pornographic photographing, filming, or depicting of a child under
24 eighteen (18) years of age by another.

1 ~~F.~~ F. 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 ~~F.~~ G. 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.~~ H. 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 ~~H.~~ I. 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 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1123, as
15 last amended by Section 4, Chapter 167, O.S.L. 2018 (21 O.S. Supp.
16 2019, Section 1123), is amended to read as follows:

17 Section 1123. A. It is a felony for any person to knowingly
18 and intentionally:

19 1. Make any oral, written or electronically or computer-
20 generated lewd or indecent proposal to any child under sixteen (16)
21 years of age, or other individual the person believes to be a child
22 under sixteen (16) years of age, for the child to have unlawful
23 sexual relations or sexual intercourse with any person; or
24

1 2. Look upon, touch, maul, or feel the body or private parts of
2 any child under sixteen (16) years of age in any lewd or lascivious
3 manner by any acts against public decency and morality, as defined
4 by law; or

5 3. Ask, invite, entice, or persuade any child under sixteen
6 (16) years of age, or other individual the person believes to be a
7 child under sixteen (16) years of age, to go alone with any person
8 to a secluded, remote, or secret place, with the unlawful and
9 willful intent and purpose then and there to commit any crime
10 against public decency and morality, as defined by law, with the
11 child; or

12 4. In any manner lewdly or lasciviously look upon, touch, maul,
13 or feel the body or private parts of any child under sixteen (16)
14 years of age in any indecent manner or in any manner relating to
15 sexual matters or sexual interest; or

16 5. In a lewd and lascivious manner and for the purpose of
17 sexual gratification:

- 18 a. urinate or defecate upon a child under sixteen (16)
19 years of age, or force or require a child to defecate
20 or urinate upon the body or private parts of another,
21 or for the purpose of sexual gratification,
22 b. ejaculate upon or in the presence of a child,
23 c. cause, expose, force or require a child to look upon
24 the body or private parts of another person,

- 1 d. force or require any child under sixteen (16) years of
2 age or other individual the person believes to be a
3 child under sixteen (16) years of age, to view any
4 obscene materials, child pornography or materials
5 deemed harmful to minors as such terms are defined by
6 Sections 1024.1 and 1040.75 of this title,
7 e. cause, expose, force or require a child to look upon
8 sexual acts performed in the presence of the child, or
9 f. force or require a child to touch or feel the body or
10 private parts of the child or another person.

11 Any person convicted of any violation of this subsection shall
12 be punished by imprisonment in the custody of the Department of
13 Corrections for not less than three (3) years nor more than twenty
14 (20) years, except when the child is under twelve (12) years of age
15 at the time the offense is committed, and in such case the person
16 shall, upon conviction, be punished by imprisonment in the custody
17 of the Department of Corrections for not less than twenty-five (25)
18 years. The provisions of this subsection shall not apply unless the
19 accused is at least three (3) years older than the victim, except
20 when accomplished by the use of force or fear. Except as provided
21 in Section 51.1a of this title, any person convicted of a second or
22 subsequent violation of this subsection shall be guilty of a felony
23 punishable as provided in this subsection and shall not be eligible
24 for probation, suspended or deferred sentence. Except as provided

1 in Section 51.1a of this title, any person convicted of a third or
2 subsequent violation of this subsection shall be guilty of a felony
3 punishable by imprisonment in the custody of the Department of
4 Corrections for a term of life or life without parole, in the
5 discretion of the jury, or in case the jury fails or refuses to fix
6 punishment then the same shall be pronounced by the court. Any
7 person convicted of a violation of this subsection after having been
8 twice convicted of a violation of subsection A of Section 1114 of
9 this title, Section 888 of this title, sexual abuse of a child
10 pursuant to Section 843.5 of this title, or of any attempt to commit
11 any of these offenses or any combination of convictions pursuant to
12 these sections shall be punished by imprisonment in the custody of
13 the Department of Corrections for a term of life or life without
14 parole.

15 B. No person shall commit sexual battery on any other person.

16 "Sexual battery" shall mean the intentional touching, mauling or
17 feeling of the body or private parts of any person sixteen (16)
18 years of age or older, in a lewd and lascivious manner:

19 1. Without the consent of that person;

20 2. When committed by a state, county, municipal or political
21 subdivision employee or a contractor or an employee of a contractor
22 of the state, a county, a municipality or political subdivision of
23 this state upon a person who is under the legal custody, supervision
24 or authority of a state agency, a county, a municipality or a

1 political subdivision of this state, or the subcontractor or
2 employee of a subcontractor of the contractor of the state or
3 federal government, a county, a municipality or a political
4 subdivision of this state;

5 3. When committed upon a person who is at least sixteen (16)
6 years of age and is less than twenty (20) years of age and is a
7 student, or in the legal custody or supervision of any public or
8 private elementary or secondary school, or technology center school,
9 by a person who is eighteen (18) years of age or older and is an
10 employee of the same school system that the victim attends; or

11 4. When committed upon a person who is nineteen (19) years of
12 age or younger and is in the legal custody of a state agency,
13 federal agency or a tribal court, by a foster parent or foster
14 parent applicant.

15 As used in this subsection, "employee of the same school system"
16 means a teacher, principal or other duly appointed person employed
17 by a school system or an employee of a firm contracting with a
18 school system who exercises authority over the victim.

19 C. No person shall in any manner lewdly or lasciviously:

20 1. Look upon, touch, maul, or feel the body or private parts of
21 any human corpse in any indecent manner relating to sexual matters
22 or sexual interest; or

23 2. Urinate, defecate or ejaculate upon any human corpse.
24

1 D. Any person convicted of a violation of subsection B or C of
2 this section shall be deemed guilty of a felony and shall be
3 punished by imprisonment in the custody of the Department of
4 Corrections for not more than ten (10) years.

5 E. The fact that an undercover operative or law enforcement
6 officer was involved in the detection and investigation of an
7 offense pursuant to this section shall not constitute a defense to a
8 prosecution under this section.

9 F. Except for persons sentenced to life or life without parole,
10 any person sentenced to imprisonment for two (2) years or more for a
11 violation of this section shall be required to serve a term of post-
12 imprisonment supervision pursuant to subparagraph f of paragraph 1
13 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
14 under conditions determined by the Department of Corrections. The
15 jury shall be advised that the mandatory post-imprisonment
16 supervision shall be in addition to the actual imprisonment.

17 ~~G. Any parent or person responsible for the child's health,~~
18 ~~safety or welfare who violates subsection A, B or C of this section~~
19 ~~when the victim is at least sixteen (16) years of age but less than~~
20 ~~eighteen (18) years of age, upon conviction, shall be guilty of a~~
21 ~~felony and shall be punished by imprisonment in the custody of the~~
22 ~~Department of Corrections for not more than ten (10) years. For~~
23 ~~purposes of this section, "person responsible for a child's health,~~
24 ~~safety or welfare" shall include, but not be limited to:~~

- ~~a. a parent,~~
- ~~b. a legal guardian,~~
- ~~c. custodian,~~
- ~~d. a foster parent,~~
- ~~e. a person eighteen (18) years of age or older with whom~~
~~the child's parent cohabitates,~~
- ~~f. any other adult residing in the home of the child,~~
- ~~g. an agent or employee of a public or private~~
~~residential home, institution, facility or day~~
~~treatment program as defined in Section 175.20 of~~
~~Title 10 of the Oklahoma Statutes, or~~
- ~~h. an owner, operator or employee of a child care~~
~~facility, as defined by Section 402 of Title 10 of the~~
~~Oklahoma Statutes.~~

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 843.8 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any parent or other person responsible for the health, safety or welfare of a child who commits, permits or enables any sexual offense against said child under eighteen (18) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for a term not exceeding life imprisonment, or by imprisonment in a county jail for a term not exceeding one (1) year, or by a fine of not less than Five Hundred

1 Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00),
2 or by both such fine and imprisonment, except as provided in Section
3 51.1a of Title 21 of the Oklahoma Statutes.

4 B. Any parent or other person responsible for the health,
5 safety or welfare of a child who commits, permits or enables any
6 sexual offense against said child under twelve (12) years of age
7 shall, upon conviction, be punished by imprisonment in the custody
8 of the Department of Corrections for a term of not less than twenty-
9 five (25) years and not exceeding life imprisonment, and by a fine
10 of not less than Five Hundred Dollars (\$500.00) nor more than Five
11 Thousand Dollars (\$5,000.00), or by both such fine and imprisonment,
12 except as provided in Section 51.1a of Title 21 of the Oklahoma
13 Statutes.

14 C. Except for persons sentenced to life or life without parole,
15 any person sentenced to imprisonment for two (2) years or more for a
16 violation of this section shall be required to serve a term of post-
17 imprisonment supervision pursuant to subparagraph f of paragraph 1
18 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes
19 under conditions determined by the Department of Corrections. The
20 jury shall be advised that the mandatory post-imprisonment
21 supervision shall be in addition to the actual imprisonment.

22 D. As used in this section:
23
24

1 1. "Enabling" means the causing, procuring or permitting of a
2 sexual offense against a child under eighteen (18) years of age by
3 another;

4 2. "Permit" means to authorize or allow for the care of a child
5 by an individual when the person authorizing or allowing such care
6 knows or reasonably should know that the child may be placed at risk
7 of such an offense; and

8 3. "Sexual offense" is limited to the following offenses:

9 a. assault with intent to commit a felony, as provided
10 for in Section 681 of Title 21 of the Oklahoma

11 Statutes, if the offense involved sexual assault,

12 b. human trafficking, as provided for in Section 748 of
13 Title 21 of the Oklahoma Statutes, if the offense
14 involved child trafficking for commercial sex,

15 c. child endangerment, as provided for in Section 852.1
16 of Title 21 of the Oklahoma Statutes, if the offense
17 involved sexual abuse of a child,

18 d. trafficking in children, as provided for in Section
19 866 of Title 21 of the Oklahoma Statutes,

20 e. incest, as provided for in Section 885 of Title 21 of
21 the Oklahoma Statutes,

22 f. crime against nature, as provided for in Section 886
23 of Title 21 of the Oklahoma Statutes,

- g. forcible sodomy, as provided for in Section 888 of Title 21 of the Oklahoma Statutes,
- h. rape by instrumentation, as provided for in Section 1111.1 of Title 21 of the Oklahoma Statutes,
- i. rape in the first degree, as provided for in Section 1114 of Title 21 of the Oklahoma Statutes,
- j. rape in the second degree, as provided for in Section 1114 of Title 21 of the Oklahoma Statutes,
- k. indecent exposure, as provided for in Section 1021 of Title 21 of the Oklahoma Statutes,
- l. procuring or causing the participation of a minor in child pornography, as provided for in Section 1021.2 of Title 21 of the Oklahoma Statutes,
- m. permitting or consenting to the participation of a minor in child pornography, as provided for in Section 1021.3 of Title 21 of the Oklahoma Statutes,
- n. purchase, procurement or possession of child pornography, as provided for in Section 1024.2 of Title 21 of the Oklahoma Statutes,
- o. engaging in or soliciting prostitution, as provided for in Section 1029 of Title 21 of the Oklahoma Statutes, if the offense involved child prostitution,
- p. publication, distribution or participation in the preparation of obscene material, as provided for in

- 1 Section 1040.8 of Title 21 of the Oklahoma Statutes,
2 if the offense involved child pornography,
3 q. aggravated possession of child pornography, as
4 provided for in Section 1040.12a of Title 21 of the
5 Oklahoma Statutes,
6 r. sale of distribution of obscene material, as provided
7 for in Section 1040.13 of Title 21 of the Oklahoma
8 Statutes, if the offense involved child pornography,
9 s. soliciting sexual conduct or communication with a
10 minor by use of technology, as provided for in Section
11 1040.13a of Title 21 of the Oklahoma Statutes,
12 t. offering or transporting a child for purposes of
13 prostitution, as provided for in Section 1087 of Title
14 21 of the Oklahoma Statutes, and
15 u. child prostitution, as provided for in Section 1088 of
16 Title 21 of the Oklahoma Statutes.

17 SECTION 4. This act shall become effective November 1, 2020.

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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/06/2020 - DO
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