

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3555

By: Goodwin

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2011, Section 843.5, as last amended by Section 1, Chapter 284, O.S.L. 2019 (21 O.S. Supp. 2019, Section 843.5), which relates to penalties for child abuse; modifying scope of certain definitions; deleting unlawful acts and related penalties; reducing certain penalties; providing sentencing requirement for persons convicted of enabling child abuse or neglect; making sentencing requirements retroactive; authorizing requests for sentence modification; directing courts to modify certain sentences; 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 last amended by Section 1, Chapter 284, O.S.L. 2019 (21 O.S. Supp. 2019, 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 (1) year, or by a fine of not less than Five Hundred Dollars
2 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both
3 such fine and imprisonment. As used in this subsection, "child
4 abuse" means the willful or malicious harm ~~or threatened harm or~~
5 ~~failure to protect from harm or threatened harm to the health,~~
6 ~~safety, or welfare~~ of a child under eighteen (18) years of age by
7 another, or the act of willfully or maliciously injuring, torturing
8 or maiming a child under eighteen (18) years of age by another.

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

1 ~~C.~~ 1. 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~~ four (4) years, 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.

9 2. As used in this subsection, "child neglect" means the
10 willful or malicious neglect, as defined by Section 1-1-105 of Title
11 10A of the Oklahoma Statutes, of a child under eighteen (18) years
12 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~~

~~the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.~~

~~E.~~ C. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished 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 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, except as provided in Section 51.1a of this title or as otherwise provided in subsection ~~F~~ D of this section for a child victim under twelve (12) years of age. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, which includes but is not limited to rape, incest, and lewd or indecent acts or proposals, of a child under eighteen (18) years of age by another.

1 ~~F.~~ D. 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.~~ E. 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~~ twenty-
12 five (25) 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. As used in this subsection, "enabling
16 child sexual abuse" means the causing, procuring or permitting of a
17 willful or malicious act of child sexual abuse, which includes but
18 is not limited to rape, incest, and lewd or indecent acts or
19 proposals, of a child under the age of eighteen (18) by another. As
20 used in this subsection, "permit" means to authorize or allow for
21 the care of a child by an individual when the person authorizing or
22 allowing such care knows ~~or reasonably should know~~ that the child
23 will be placed at risk of sexual abuse as proscribed by this
24 subsection.

1 ~~H.~~ F. 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~~ G 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.~~ G. 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.~~ H. 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~~ twenty-
12 five (25) 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. As used in this subsection, "enabling
16 child sexual exploitation" means the causing, procuring or
17 permitting of a willful or malicious act of child sexual
18 exploitation, which includes but is not limited to allowing,
19 permitting, or encouraging a child under eighteen (18) years of age
20 to engage in prostitution or allowing, permitting, encouraging or
21 engaging in the lewd, obscene or pornographic photographing,
22 filming, or depicting of a child under eighteen (18) years of age by
23 another. As used in this subsection, "permit" means to authorize or
24 allow for the care of a child by an individual when the person

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

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

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

15 K. Any person convicted of enabling an act previously or
16 currently prohibited by this section shall not be sentenced to any
17 penalty that exceeds the penalty received by the actual perpetrator
18 of the act or that exceeds the maximum penalties in this section. A
19 person previously convicted of enabling child abuse or neglect shall
20 not be sentenced to any penalty exceeding that prescribed for the
21 crime of child endangerment as provided in Section 852.1 of this
22 title.

23 L. The provisions of this subsection shall be retroactive. Any
24 person convicted of enabling an act previously or currently

1 prohibited by this section and sentenced to a penalty exceeding that
2 of the actual perpetrator or exceeding the maximum penalties in this
3 section may request a modification of the sentence by motion or
4 petition to the sentencing court. The court shall thereupon modify
5 the sentence to ensure compliance with this subsection.

6 SECTION 2. This act shall become effective November 1, 2020.

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8 57-2-10624 GRS 12/18/19
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