STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 856

By: Bullard

AS INTRODUCED

An Act relating to child sexual exploitation; amending 21 O.S. 2021, Section 843.5, which relates to child abuse and child sexual exploitation; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 843.5, is amended to read as follows:

Section 843.5. A. Any person who shall willfully or maliciously engage in child abuse, as defined in this section, 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 ($500.00) nor more than Five Thousand Dollars ($5,000.00), or both such fine and imprisonment.

B. Any person responsible for the health, safety or welfare of a child who shall willfully or maliciously engage in enabling child
abuse, as defined in this section, 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.

C. Any person responsible for the health, safety or welfare of
a child who shall willfully or maliciously engage in child neglect,
as defined in this section, 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.

D. Any parent or other person who shall willfully or
maliciously engage in enabling child neglect 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.

E. Any person responsible for the health, safety or welfare of
a child who shall willfully or maliciously engage in child sexual
abuse, as defined in this section, 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 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.

F. Any person responsible for the health, safety or welfare of a child who shall willfully or maliciously engage in child sexual abuse, as defined in this section, to a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00).
G. Any parent or other person who shall willfully or maliciously engage in enabling 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.

H. Any person who shall willfully or maliciously engage in child sexual exploitation, as defined in this section, 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 subsection I 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.
shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

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

J. Any person responsible for the health, safety or welfare of a child who shall willfully or maliciously engage in enabling child sexual exploitation, as defined in this section, 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.

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

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

M. Consent shall not be a defense for any violation provided
for in this section.

N. Notwithstanding the age requirements of other statutes
referenced within this section, this section shall apply to any
child under eighteen (18) years of age.

O. As used in this section:

1. “Child abuse” means:
   a. the willful or malicious harm or threatened harm or
      failure to protect from harm or threatened harm to the
      health, safety or welfare of a child under eighteen
      (18) years of age by a person responsible for a
      child’s health, safety or welfare, or
   b. the act of willfully or maliciously injuring,
      torturing or maiming a child under eighteen (18) years
      of age by any person;

2. “Child neglect” means the willful or malicious neglect, as
defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes, of
a child under eighteen (18) years of age by a person responsible for
a child’s health, safety or welfare;
3. “Child sexual abuse” means the willful or malicious sexual abuse of a child under eighteen (18) years of age by a person responsible for a child’s health, safety or welfare and includes, but is not limited to:

   a. sexual intercourse,
   b. penetration of the vagina or anus, however slight, by an inanimate object or any part of the human body not amounting to sexual intercourse,
   c. sodomy,
   d. incest, or
   e. a lewd act or proposal, as defined in this section;

4. “Child sexual exploitation” means the willful or malicious sexual exploitation of a child under eighteen (18) years of age by another and includes, but is not limited to:

   a. human trafficking, as provided for in Section 748 of this title, if the offense involved child trafficking for commercial sex,
   b. trafficking in children, as provided for in Section 866 of this title, if the offense was committed for the sexual gratification of any person,
   c. procuring or causing the participation of a minor in child pornography, as provided for in Section 1021.2 of this title,
d. purchase, procurement or possession of child pornography, as provided for in Section 1024.2 of this title,

e. engaging in or soliciting prostitution, as provided for in Section 1029 of this title, if the offense involved child prostitution,

f. publication, distribution or participation in the preparation of obscene material, as provided for in Section 1040.8 of this title, if the offense involved child pornography,

g. aggravated possession of child pornography, as provided for in Section 1040.12a of this title,

h. sale or distribution of obscene material, as provided for in Section 1040.13 of this title,

i. soliciting sexual conduct or communication with a minor by use of technology, as provided for in Section 1043.13a of this title,

j. offering or transporting a child for purposes of prostitution, as provided for in Section 1087 of this title, and

k. child prostitution, as provided for in Section 1088 of this title;
5. “Enabling child abuse” means the causing, procuring or permitting of child abuse by a person responsible for a child’s health, safety or welfare;

6. “Enabling child neglect” means the causing, procuring or permitting of child neglect by a person responsible for a child’s health, safety or welfare;

7. “Enabling child sexual abuse” means the causing, procuring or permitting of child sexual abuse by a person responsible for a child’s health, safety or welfare;

8. “Enabling child sexual exploitation” means the causing, procuring or permitting of child sexual exploitation by a person responsible for a child’s health, safety or welfare;

9. “Grooming” shall be defined as befriending and establishing an emotional connection with a minor or a person responsible for a minor’s health, safety, or welfare to lower the minor’s inhibitions with the intent to engage the minor in:

   a. sexual intercourse,
   
   b. a lewd act or proposal,

   c. the showing of lewd material,

   d. penetration of the vagina or anus, however slight, by an inanimate object or any part of the human body not amounting to sexual intercourse,

   e. sodomy, or

   f. incest.
If found guilty, grooming shall carry the same sentencing as child sexual abuse and exploitation;

10. “Incest” means marrying, committing adultery or fornicating with a child by a person responsible for the health, safety or welfare of a child;

10. 11. “Lewd act or proposal” means:

a. making any oral, written or electronic or computer-generated lewd or indecent proposal to a child for the child to have unlawful sexual relations or sexual intercourse with any person,

b. looking upon, touching, mauling or feeling the body or private parts of a child in a lewd or lascivious manner or for the purpose of sexual gratification,

c. asking, inviting, enticing or persuading any child to go alone with any person to a secluded, remote or secret place for a lewd or lascivious purpose,

d. urinating or defecating upon a child or causing, forcing or requiring a child to defecate or urinate upon the body or private parts of another person for the purpose of sexual gratification,

e. ejaculating upon or in the presence of a child,

f. causing, exposing, forcing or requiring a child to look upon the body or private parts of another person for the purpose of sexual gratification,
g. causing, forcing or requiring any child to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined in Sections 1024.1 and 1040.75 of this title,

h. causing, exposing, forcing or requiring a child to look upon sexual acts performed in the presence of the child for the purpose of sexual gratification, or

i. causing, forcing or requiring a child to touch or feel the body or private parts of the child or another person for the purpose of sexual gratification;

11. “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 the conduct or harm proscribed by this section;

12. “Person responsible for a child’s health, safety or welfare” for purposes of this section shall include, but not be limited to:

   a. the parent of the child,

   b. the legal guardian of the child,

   c. the custodian of the child,

   d. the foster parent of the child,

   e. a person eighteen (18) years of age or older with whom the parent of the child cohabitates, who is at least three (3) years older than the child,
f. any other person eighteen (18) years of age or older residing in the home of the child, who is at least three (3) years older than the child,

g. an owner, operator, agent, employee or volunteer 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, that the child attended,

h. an owner, operator, agent, employee or volunteer of a child care facility, as defined in Section 402 of Title 10 of the Oklahoma Statutes, that the child attended,

i. an intimate partner of the parent of the child, as defined in Section 60.1 of Title 22 of the Oklahoma Statutes, or

j. a person who has voluntarily accepted responsibility for the care or supervision of a child;

13. 14. “Sexual intercourse” means the actual penetration, however slight, of the vagina or anus by the penis; and

14. 15. “Sodomy” means:

a. penetration, however slight, of the mouth of the child by a penis,
b. penetration, however slight, of the vagina of a person responsible for a child’s health, safety or welfare, by the mouth of a child,

c. penetration, however slight, of the mouth of the person responsible for a child’s health, safety or welfare by the penis of the child, or

d. penetration, however slight, of the vagina of the child by the mouth of the person responsible for a child’s health, safety or welfare.

SECTION 2. This act shall become effective November 1, 2023.