

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1345

By: Peters

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 644, which relates to punishment for certain assaults and batteries; amending 22 O.S. 2001, Sections 60.6 and 60.11, which relate to the Protection from Domestic Abuse Act; updating language; adding to list of persons against whom someone commits domestic abuse; adding penalties for certain offenses; increasing penalties for subsequent offenses and crimes committed in presence of child; requiring certain counseling or treatment; requiring certification of certain programs; requiring certain evaluations; making certain programs not qualified; providing for review hearings; providing purpose; providing for subsequent or other review hearings; providing penalty for noncompliance; requiring certain attendance; authorizing certain in lieu of attendance reports; providing for assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation; specifying persons on list; providing for punishment; providing for second and subsequent convictions; defining term; providing for jurisdiction; providing for the immunity of certain persons; specifying reasons; prohibiting certain fees or costs to certain persons; requiring certain past history information be available to the court; modifying content of certain orders; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 644, is amended to read as follows:

Section 644. A. ~~Assault~~ A conviction for assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

B. ~~Assault~~ A conviction for assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety

(90) days, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

C. 1. Any person who commits any assault and battery against any of the following persons shall be deemed guilty of domestic abuse and shall be punished as provided by this subsection:

- a. a current or former spouse,
- b. a present spouse of a former spouse, ~~parents,~~
- c. a parent,
- d. a foster parent,
- e. a child, or a person otherwise related by blood or marriage,
- f. a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes,
- g. an individual with whom the defendant has had a child,
- h. a person who formerly lived in the same household as the defendant, or
- i. a person living in the same household as the defendant ~~shall be guilty of domestic abuse.~~

2. a. Upon conviction of assault and battery against any person specified by this subsection, the defendant shall be punished by imprisonment in the county jail not exceeding one (1) year, ~~or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment.~~
- b. Any person convicted of domestic abuse ~~as defined in this subsection that was~~ committed in the presence of a child shall be sentenced to not less than six (6) months imprisonment in the county jail.
- c. In addition to the penalty provided by subparagraphs a and b of this paragraph, the defendant may be punished

by imposition of a fine of not more than Three
Thousand Dollars (\$3,000.00).

3. a. (1) Any second or subsequent conviction of domestic abuse shall be a felony punishable by imprisonment in the State Penitentiary.
- (2) In addition to the penalty provided by division (1) of this subparagraph, the defendant may be punished by a fine of not more than Five Thousand Dollars (\$5,000.00).
- b. Any person convicted of a second or subsequent domestic abuse ~~as defined in this subsection that was~~ committed in the presence of a child shall be sentenced to not less than one (1) year in the State Penitentiary. ~~The~~
- c. In addition to the penalty provided by division (1) of subparagraph a of this paragraph, the defendant may be punished by a fine for a felony violation of this subsection shall of not be more than Five Thousand Dollars (\$5,000.00) Ten Thousand Dollars (\$10,000.00).
~~Every~~
4. a. For every conviction of domestic abuse, the court shall ~~require~~ specifically order as a condition of a suspended or deferred sentence or probation that the defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse pursuant to this paragraph.
- b. (1) The court shall either require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner and/or a domestic abuse counseling program approved by the court or a domestic abuse treatment program certified by the Department of

Mental Health and Substance Abuse Services. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend, finish and be evaluated before and after attendance by a program counselor or a private counselor.

(2) A program for anger management shall not qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection.

c. (1) The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

(2) The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

d. The court may also set subsequent or other review hearings as the court determines necessary to assure the defendant attends and complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

e. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is

not in compliance with any domestic abuse counseling or treatment requirements, the court may immediately revoke all or any part of any suspended sentence, deferred sentence or probation and subject the defendant to any or all remaining portions of the original sentence.

f. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the defendant's progress from the individual counseling or the domestic abuse counseling or treatment program for the purposes of the review. There shall, generally, be no requirement for the victim to attend review hearings.

g. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

D. As used in this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present or is present within the same residence and may or could see or hear an act of domestic violence. For purposes of this subsection a child may be any child whether or not related to the victim or the defendant.

E. For the purposes of this subsection, any conviction for assault and battery against a:

1. A current or former spouse, ~~a;~~

2. A present spouse of a former spouse, ~~parents, a;~~

3. A parent;

4. A foster parent, ~~a;~~

5. A child, ~~or~~ a person otherwise related by blood or marriage,

a;

6. A person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes,~~an~~;

7. An individual with whom the defendant has had a child,~~a~~;

8. A person who formerly lived in the same household as the defendant,~~i~~ or ~~any~~

9. Any person living in the same household as the defendant shall constitute a sufficient basis for a felony charge if that:

~~1. If that~~

a. conviction is rendered in any state, county or parish court of record of this or any other state,~~i~~ or

~~2. If that~~

b. conviction is rendered in any municipal court of record of this or any other state for which any jail time was served; provided, no conviction in a municipal court of record entered prior to November 1, 1997, shall constitute a prior conviction for purposes of a felony charge.

F. 1. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation of any of the following persons shall be deemed guilty of felony domestic abuse by strangulation and shall be punished as provided by this subsection:

a. a current or former spouse,

b. a present spouse of a former spouse,

c. a parent,

d. a foster parent,

e. a child or a person otherwise related by blood or marriage,

f. a person whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes,

g. an individual with whom the defendant has had a child,

h. a person who formerly lived in the same household as the defendant, or

i. a person living in the same household as a defendant.

2. Upon conviction of domestic abuse by strangulation, the defendant shall be punished by imprisonment of not less than six (6) months nor more than one (1) year in the county jail or not less than six (6) months and not exceeding three (3) years in the State Penitentiary. In addition, a fine of not more than Three Thousand Dollars (\$3,000.00) may be imposed.

3. Upon any second or subsequent conviction, the defendant shall be punished by imprisonment in the State Penitentiary for a period of not less than three (3) years and not exceeding ten (10) years. In addition, a fine of not more than Ten Thousand Dollars (\$10,000.00) may be imposed.

4. As used in this subsection, "strangulation" means a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck.

G. Any district court of the State of Oklahoma and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers, certified by the Department of Mental Health and Substance Abuse Services;

2. Attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation; and

3. Attend, finish and be evaluated before and after attendance by a treatment program for domestic abusers, certified by the Department of Mental Health and Substance Abuse Services.

H. Any treatment program for domestic abusers, certified by the Department of Mental Health and Substance Abuse Services and operating within the established standards and criteria of a certified treatment program for domestic abusers as established by

the Department of Mental Health and Substance Abuse Services shall be immune from any liability or prosecution for providing treatment or counseling services to any court-ordered or court-referred defendant pursuant to subsection C of this section or any self-referred individual who voluntarily attends a certified treatment program for domestic abusers.

I. There shall be no charge of fees or costs to any victim of domestic violence, stalking or sexual assault in connection with the prosecution of the domestic violence, stalking or sexual assault offense in the State of Oklahoma.

J. In the course of prosecuting any charge of domestic abuse, domestic abuse by strangulation, stalking, harassment, rape or violation of a protective order, the prosecutor shall provide the court, prior to sentencing or any plea agreement, a local history and any other available history of past convictions of the defendant within the last ten (10) years relating to domestic abuse, domestic abuse by strangulation, stalking, harassment, rape, violation of a protective order and any other violent misdemeanors or felonies.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.6, is amended to read as follows:

Section 60.6 A. Except as otherwise provided by this section, any person who:

1. Has been served with an ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both such fine and imprisonment; ~~and~~

2. After a previous conviction of a violation of a protective order, is convicted of a second ~~or subsequent~~ offense pursuant to the provisions of this section shall, upon conviction thereof, be ~~deemed~~ guilty of a misdemeanor and shall be punished by a term of

imprisonment in the county jail of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than One Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00); and

3. After two previous convictions for violating a protective order, is convicted of a subsequent offense pursuant to the provisions of this section shall, upon conviction thereof, be guilty of a felony and shall be punished by a term of imprisonment of not less than six (6) months and not more than five (5) years. In addition to the term of imprisonment, the person may be punished by a fine of not less than Two Thousand Dollars (\$2,000.00) and not more than Ten Thousand Dollars (\$10,000.00).

B. 1. Any person who has been served with an ex parte or final protective order or foreign protective order who violates the protective order and ~~without justifiable excuse~~ causes physical injury or physical impairment to the plaintiff or to any other person named in ~~said~~ the protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. In determining the term of imprisonment required by this ~~section~~ subsection, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

C. The minimum sentence of imprisonment issued pursuant to the provisions of paragraph 2 of subsection A and subsection B of this section shall not be subject to statutory provisions for suspended

sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. 1. In addition to any other penalty specified by this section, the court ~~may require a~~ shall order the defendant to undergo the treatment or participate in the counseling ~~services~~ necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim.

2. a. The court shall require the defendant to either participate in domestic abuse counseling or undergo treatment by an individual licensed practitioner and/or a domestic abuse counseling program approved by the court or a domestic abuse treatment program certified by the Department of Mental Health and Substance Abuse Services.

b. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend, finish and be evaluated before and after attendance by a program counselor or a private counselor.

c. A program for anger management shall not qualify for the counseling or treatment required for domestic abuse pursuant to the provisions of this subsection.

E. Ex parte and final protective orders shall include notice of these penalties.

F. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim ~~and~~. The court

may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

G. Any district court of the State of Oklahoma and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Department of Mental Health and Substance Abuse Services;

2. Attend domestic abuse counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and

3. Attend, finish and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Department of Mental Health and Substance Abuse Services.

H. Any treatment program for domestic abusers, certified by the Department of Mental Health and Substance Abuse Services and operating within the established standards and criteria of a certified treatment program for domestic abusers as established by the Department of Mental Health and Substance Abuse Services shall be immune from any liability or prosecution for providing treatment or counseling services to any court-ordered or court-referred defendant or any self-referred individual who voluntarily attends such a certified treatment program for domestic abusers.

I. 1. If the court orders the defendant to undergo treatment or participate in the counseling necessary to bring about cessation of domestic abuse against the victim, as part of a sentence for violation of a protective order, the court shall immediately schedule a review hearing within one hundred twenty (120) days after the defendant is ordered to participate in counseling or undergo treatment in order to assure the attendance and compliance of the defendant with the court order and the domestic abuse counseling or treatment requirements. There shall, generally, be no requirement for the victim to attend review hearings.

2. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing.

3. At the first review hearing, if the defendant is not in compliance with the provisions of this subsection and any domestic abuse counseling or treatment requirements, the court may determine that the defendant is in violation of the protective order or the order of the court and may proceed with sentencing under this section for a second violation of a protective order. During the first review hearing, a second review hearing shall be scheduled within two (2) months after the expected date of the completion by the defendant of the counseling or treatment.

4. If the defendant has completed counseling or treatment, a letter from the counselor or domestic abuse counseling or treatment program that the defendant has completed counseling or treatment may suffice to waive the second hearing.

5. If the defendant has not satisfactorily completed counseling or treatment by the date of the second hearing, the court may:

- a. determine that the defendant has committed a second or third violation of the protective order or order of the court and may proceed with sentencing under this section for violation of a protective order, or
- b. may order the defendant to further counseling or treatment per the recommendations of the treatment program or both.

J. At no time under any proceeding may a person protected by a protective order be held to be in violation of his or her own protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 60.11, is amended to read as follows:

Section 60.11 In addition to any other provisions required by the Protection from Domestic Abuse Act, or otherwise required by law, each ex parte or final protective order issued pursuant to the Protection from Domestic Abuse Act shall have the following statement printed in bold-faced type or in capital letters:

"THE FILING OR NONFILING OF CRIMINAL CHARGES AND THE PROSECUTION OF THE CASE SHALL NOT BE DETERMINED BY A PERSON WHO IS PROTECTED BY THIS ORDER, BUT SHALL BE DETERMINED BY THE PROSECUTOR. NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER. THIS ORDER SHALL BE IN EFFECT FOR THREE (3) YEARS UNLESS EXTENDED, MODIFIED, VACATED OR RESCINDED BY THE COURT. A VIOLATION OF THIS ORDER IS PUNISHABLE BY A FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000.00) OR UP TO ONE (1) YEAR IN THE COUNTY JAIL, OR BY BOTH SUCH FINE AND IMPRISONMENT.

A SECOND VIOLATION OF THIS ORDER IS PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL FOR A MINIMUM OF TEN (10) DAYS AND UP TO ONE (1) YEAR AND A FINE OF NOT LESS ONE THOUSAND DOLLARS (\$1,000.00) AND UP TO FIVE THOUSAND DOLLARS (\$5,000.00).

A THIRD VIOLATION OF THIS ORDER SHALL BE A FELONY AND SHALL BE PUNISHED BY A TERM OF IMPRISONMENT OF NOT LESS THAN SIX (6) MONTHS AND NOT MORE THAN FIVE (5) YEARS. IN ADDITION TO THE TERM OF IMPRISONMENT, THE PERSON MAY BE PUNISHED BY A FINE OF NOT LESS THAN TWO THOUSAND DOLLARS (\$2,000.00) AND NOT MORE THAN TEN THOUSAND DOLLARS (\$10,000.00).

A VIOLATION OF THIS ORDER WHICH CAUSES INJURY SHALL BE PUNISHABLE BY TWENTY (20) DAYS TO ONE (1) YEAR IN THE COUNTY JAIL OR A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000.00), OR BY BOTH SUCH FINE AND IMPRISONMENT.

POSSESSION OF A FIREARM OR AMMUNITION BY A DEFENDANT WHILE THIS ORDER IS IN EFFECT MAY SUBJECT THE DEFENDANT TO PROSECUTION FOR A VIOLATION OF FEDERAL LAW EVEN IF THIS ORDER DOES NOT SPECIFICALLY PROHIBIT THE DEFENDANT FROM POSSESSING A FIREARM OR AMMUNITION."

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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