STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 627 By: Laster

FLOOR SUBSTITUTE

[domestic abuse - allowing certain treatment
effective date -
emergency]

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 644, as amended by Section 1, Chapter 516, O.S.L. 2004 (21 O.S. Supp. 2004, Section 644), is amended to read as follows:

Section 644. A. 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 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. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, 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 individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, 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. 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. Any second or subsequent conviction of domestic abuse shall be a felony. 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. The fine for a felony violation of this subsection shall not be more than Five Thousand Dollars ($5,000.00). For every conviction of domestic abuse, the court ~~shall~~:

1. ~~Specifically~~ May specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2. a. The court ~~shall~~ may require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner 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~~ Any defendant ~~is~~ ordered to participate in a domestic abuse counseling or treatment program~~, the order shall require the defendant to~~ shall attend the program for a minimum of fifty-two (52) weeks for a felony offense or forty-eight (48) weeks for a misdemeanor offense, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.

b. A program for anger management, couples counseling, or family and marital counseling ~~shall~~ may not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. ~~If, after~~ After sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional ~~determines that~~ shall determine whether the defendant ~~does not evaluate~~ evaluates as a perpetrator of domestic violence ~~or does evaluate~~. If the defendant evaluates as a perpetrator of domestic violence and ~~should~~ it is recommended that the defendant complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant ~~shall~~ may be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3. a. The court ~~shall~~ may 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.

b. The court ~~shall~~ may 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. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

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

5. 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 order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant to any or all remaining portions of the original sentence;

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

7. If funding is available, a referee may be appointed and assigned by the presiding judge of the district court to hear designated cases set for review under this subsection. Reasonable compensation for the referees shall be fixed by the presiding judge. The referee shall meet the requirements and perform all duties in the same manner and procedure as set forth in Sections 7003-8.6 and

7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

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

E. For the purposes of determining a prior conviction for subsection C of this section, any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, 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 individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a ~~felony charge~~ second or subsequent offense:

1. If that conviction is rendered in any state, county or parish court of record of this or any other state; or

2. If that 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~~ subsection C of this section.

F. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse

of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, 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 individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment in the State Penitentiary for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars ($3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a period of not less than three (3) years nor more than ten (10) years, or by a fine of not more than Twenty Thousand Dollars ($20,000.00), or by both such fine and imprisonment. As used in this subsection, "strangulation" means a form of asphyxia 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 this state 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, complete, 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. 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 a domestic violence, stalking, or sexual assault offense in this state.

I. In the course of prosecuting any charge of domestic abuse, 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, stalking, harassment, rape, violation of a protective order, or any other violent misdemeanor or felony convictions.

SECTION 2. This act shall become effective July 1, 2005.

SECTION 3. 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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