

CS for SB 627

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THE STATE SENATE
Wednesday, March 2, 2005

Committee Substitute for
Senate Bill No. 627

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 627 - By: LASTER of the Senate and JETT of the House.

[Domestic abuse - allowing certain treatment - repealer - 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 520, 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 by 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 fine and imprisonment.

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

1 relationship as defined by Section 60.1 of Title 22 of the Oklahoma
2 Statutes, an individual with whom the defendant has had a child, a
3 person who formerly lived in the same household as the defendant, or
4 a person living in the same household as the defendant shall be
5 guilty of domestic abuse. Upon conviction, the defendant shall be
6 punished by imprisonment in the county jail for not more than one
7 (1) year, or by a fine not exceeding Five Thousand Dollars
8 (\$5,000.00), or by both such fine and imprisonment. Upon conviction
9 for a second or subsequent offense, the person shall be punished by
10 imprisonment in the custody of the Department of Corrections for not
11 more than four (4) years, or by a fine not exceeding Five Thousand
12 Dollars (\$5,000.00), or by both such fine and imprisonment. The
13 provisions of Section 51.1 of this title shall not apply to any
14 second or subsequent offense.

15 D. Any person convicted of domestic abuse as defined in
16 subsection C of this section that results in great bodily injury to
17 the victim shall be guilty of a felony and punished by imprisonment
18 in the custody of the Department of Corrections for not more than
19 ten (10) years, or by imprisonment in the county jail for not more
20 than one (1) year. The provisions of Section 51.1 of this title
21 shall apply to any second or subsequent conviction of a violation of
22 this subsection.

1 E. Any person convicted of domestic abuse as defined in
2 subsection C of this section that was committed in the presence of a
3 child shall be punished by imprisonment in the county jail for not
4 less than six (6) months nor more than one (1) year, or by a fine
5 not exceeding Five Thousand Dollars (\$5,000.00), or by both such
6 fine and imprisonment. Any person convicted of a second or
7 subsequent domestic abuse as defined in subsection C of this section
8 that was committed in the presence of a child shall be punished by
9 imprisonment in the custody of the Department of Corrections for not
10 less than one (1) year nor more than five (5) years, or by a fine
11 not exceeding Seven Thousand Dollars (\$7,000.00), or by both such
12 fine and imprisonment. The provisions of Section 51.1 of this title
13 shall not apply to any second or subsequent offense.

14 F. ~~Every~~ 1. For every conviction of domestic abuse ~~shall~~
15 ~~require,~~ the court may specifically order as a condition of a
16 suspended sentence or probation that ~~the~~ a defendant participate in
17 counseling or undergo treatment to bring about the cessation of
18 domestic abuse as specified in paragraph 2 of this subsection.

19 2. The court may require the defendant to participate in
20 counseling or undergo treatment for domestic abuse by an individual
21 licensed practitioner or a domestic abuse counseling program
22 approved by the court or a domestic abuse treatment program
23 certified by the Department of Mental Health and Substance Abuse

1 Services. Any defendant ordered to participate in a domestic abuse
2 counseling or treatment program shall attend the program for a
3 minimum of forty-eight (48) weeks, complete the program, and be
4 evaluated before and after attendance of the program by a program
5 counselor or a private counselor. A program for anger management,
6 couples counseling, or family and marital counseling may not solely
7 qualify for the counseling or treatment requirement for domestic
8 abuse pursuant to this subsection. The counseling may be ordered in
9 addition to counseling specifically for the treatment of domestic
10 abuse or per evaluation as set forth below. After sufficient
11 evaluation and attendance at required counseling sessions, the
12 domestic violence treatment program or licensed professional shall
13 determine whether the defendant evaluates as a perpetrator of
14 domestic violence. If the defendant evaluates as a perpetrator of
15 domestic violence and it is recommended that the defendant complete
16 other programs of treatment simultaneously or prior to domestic
17 violence treatment, including but not limited to programs related to
18 the mental health, apparent substance or alcohol abuse or inability
19 or refusal to manage anger, the defendant may be ordered to complete
20 the counseling as per the recommendations of the domestic violence
21 treatment program or licensed professional.

22 3. The court may set a review hearing no more than one hundred
23 twenty (120) days after the defendant is ordered to participate in a

1 domestic abuse counseling program or undergo treatment for domestic
2 abuse to assure the attendance and compliance of the defendant with
3 the provisions of this subsection and the domestic abuse counseling
4 or treatment requirements. The court may set a second review
5 hearing after the completion of the counseling or treatment to
6 assure the attendance and compliance of the defendant with the
7 provisions of this subsection and the domestic abuse counseling or
8 treatment requirements. The court shall retain continuing
9 jurisdiction over the defendant during the course of ordered
10 counseling through the final review hearing. The court may set
11 subsequent or other review hearings as the court determines
12 necessary to assure the defendant attends and fully complies with
13 the provisions of this subsection and the domestic abuse counseling
14 or treatment requirements.

15 4. At any review hearing, if the defendant is not
16 satisfactorily attending individual counseling or a domestic abuse
17 counseling or treatment program or is not in compliance with any
18 domestic abuse counseling or treatment requirements, the court may
19 order the defendant to further or continue counseling, treatment, or
20 other necessary services. The court may revoke all or any part of a
21 suspended sentence, deferred sentence, or probation pursuant to
22 Section 991b of Title 22 of the Oklahoma Statutes and subject the
23 defendant to any or all remaining portions of the original sentence.

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

7 6. If funding is available, a referee may be appointed and
8 assigned by the presiding judge of the district court to hear
9 designated cases set for review under this subsection. Reasonable
10 compensation for the referees may be fixed by the presiding judge.
11 The referee shall meet the requirements and perform all duties in
12 the same manner and procedure as set forth in Sections 7003-8.6 and
13 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees
14 appointed in juvenile proceedings.

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

17 G. As used in this section, "in the presence of a child" means
18 in the physical presence of a child, or having knowledge that a
19 child is present and may see or hear an act of domestic violence.

20 H. For the purposes of determining a prior conviction for
21 subsections C and E of this section, any conviction for assault and
22 battery against a current or former spouse, a present spouse of a
23 former spouse, parents, a foster parent, a child, a person otherwise

1 related by blood or marriage, a person with whom the defendant is in
2 a dating relationship as defined by Section 60.1 of Title 22 of the
3 Oklahoma Statutes, an individual with whom the defendant has had a
4 child, a person who formerly lived in the same household as the
5 defendant, or any person living in the same household as the
6 defendant, shall constitute a sufficient basis for a ~~felony charge~~
7 second or subsequent offense:

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

10 2. If that conviction is rendered in any municipal court of
11 record of this or any other state for which any jail time was
12 served; provided, no conviction in a municipal court of record
13 entered prior to November 1, 1997, shall constitute a prior
14 conviction for purposes of a ~~felony charge~~ subsection C or D of this
15 section.

16 I. For purposes of subsection D of this section, "great bodily
17 injury" means bone fracture, protracted and obvious disfigurement,
18 protracted loss or impairment of the function of a body part, organ
19 or mental faculty, or substantial risk of death.

20 J. Any person who commits any assault and battery with intent
21 to cause great bodily harm by strangulation or attempted
22 strangulation against a current or former spouse, a present spouse
23 of a former spouse, parents, a foster parent, a child, a person

1 otherwise related by blood or marriage, a person with whom the
2 defendant is in a dating relationship as defined by Section 60.1 of
3 Title 22 of the Oklahoma Statutes, an individual with whom the
4 defendant has had a child, a person who formerly lived in the same
5 household as the defendant, or a person living in the same household
6 as the defendant shall, upon conviction, be guilty of domestic abuse
7 by strangulation and shall be punished by imprisonment in the
8 custody of the Department of Corrections for a term not less than
9 one (1) year nor more than three (3) years, or by a fine not
10 exceeding Three Thousand Dollars (\$3,000.00), or by both such fine
11 and imprisonment. Upon a second or subsequent conviction, the
12 defendant shall be punished by imprisonment in the custody of the
13 Department of Corrections for a term not less than three (3) years
14 nor more than ten (10) years, or by a fine not exceeding Twenty
15 Thousand Dollars (\$20,000.00), or by both such fine and
16 imprisonment. As used in this subsection, "strangulation" means a
17 form of asphyxia characterized by closure of the blood vessels or
18 air passages of the neck as a result of external pressure on the
19 neck.

20 K. Any district court of this state and any judge thereof shall
21 be immune from any liability or prosecution for issuing an order
22 that requires a defendant to:

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

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

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

8 L. There shall be no charge of fees or costs to any victim of
9 domestic violence, stalking, or sexual assault in connection with
10 the prosecution of a domestic violence, stalking, or sexual assault
11 offense in this state.

12 M. In the course of prosecuting any charge of domestic abuse,
13 stalking, harassment, rape, or violation of a protective order, the
14 prosecutor shall provide the court, prior to sentencing or any plea
15 agreement, a local history and any other available history of past
16 convictions of the defendant within the last ten (10) years relating
17 to domestic abuse, stalking, harassment, rape, violation of a
18 protective order, or any other violent misdemeanor or felony
19 convictions.

20 SECTION 2. REPEALER 21 O.S. 2001, Section 644, as
21 amended by Section 1, Chapter 516, O.S.L. 2004 (21 O.S. Supp. 2004,
22 Section 644), is hereby repealed.

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
6 PASS, As Amended and Coauthored.