

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1220

By: Glenn

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 2001, Section 644, as amended by Section 1, Chapter 520, O.S.L. 2004 (21 O.S. Supp. 2004, Section 644), which relates to assault and battery; expanding scope of crime; providing penalties; defining term; amending 21 O.S. 2001, Section 647, as amended by Section 7, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, Section 647), which relates to punishment for aggravated assault and battery; expanding scope of crime; providing penalty; amending 21 O.S. 2001, Section 649, which relates to assault and battery upon police officer; expanding scope of crime; providing penalty; amending 21 O.S. 2001, Section 650, which relates to aggravated assault and battery upon peace officer; expanding scope of crime; providing penalty; amending 21 O.S. 2001, Section 681, which relates to assaults with intent to commit felony; expanding scope of crime; providing penalty; amending 21 O.S. 2001, Section 801, which relates to robbery or attempted robbery with dangerous weapon or imitation firearm; expanding scope of crime; amending 21 O.S. 2001, Section 1272, as amended by Section 1, Chapter 465, O.S.L. 2003 (21 O.S. Supp. 2004, Section 1272), which relates to unlawful carry; providing exception for carry and use of chemical aerosol spray; and providing an effective date.

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:

1. Uses a chemical aerosol spray on another person shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months, or by a fine not exceeding One Thousand Five Hundred Dollars (\$1,500.00), or by both such fine and imprisonment;

2. Commits assault and battery in conjunction with the use of a chemical aerosol spray shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment; or

3. Discharges a chemical aerosol spray in a place where another person or persons may be present or may be affected with the intent and purpose of a prank or harassment shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment. If the prank or harassment causes any person or persons to suffer injury while under the effects of a chemical aerosol spray or while attempting to flee the area affected, the person shall, upon conviction, be guilty of a felony punishable by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment.

D. 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 for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall not apply to any second or subsequent offense.

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

~~E.~~ F. Any person convicted of domestic abuse as defined in subsection ~~E~~ D of this section that was committed in the presence of a child shall be punished by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent domestic abuse as defined in subsection ~~E~~ D of this section that was committed in the presence of a child shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5)

years, or by a fine not exceeding Seven Thousand Dollars (\$7,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall not apply to any second or subsequent offense.

~~F.~~ G. Every conviction of domestic abuse shall require as a condition of a suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

~~G.~~ H. 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 and may see or hear an act of domestic violence.

~~H.~~ I. For the purposes of subsections ~~C~~ D and ~~E~~ F 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:

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.

~~I.~~ J. For purposes of subsection ~~D~~ E of this section, "great bodily injury" means bone fracture, protracted and obvious

disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

K. For purposes of subsection C of this section, "chemical aerosol spray" means a spray that is carried solely for purposes of lawful self-defense, that is compact in size and designed to be carried on or about the person and shall include the following chemicals:

1. Orthochlorobenzalamalonitrile (CS);
2. Alphachloroacetaphenone (CN);
3. Oleoresin Capsicum (OC); or
4. Any combination of the above-listed chemicals.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 647, as amended by Section 7, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, Section 647), is amended to read as follows:

Section 647. A. Aggravated assault and battery shall be ~~punished~~ punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not exceeding five (5) years, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

B. Any person who uses a chemical aerosol spray, as defined in subsection K of Section 644 of this title, while committing aggravated assault and battery shall, upon conviction, be punishable by imprisonment in the custody of the Department of Corrections for a term not exceeding six (6) years, or by a fine of not more than Six Thousand Dollars (\$6,000.00), or both such fine and imprisonment.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 649, is amended to read as follows:

Section 649. A. Every person who, without justifiable or excusable cause, knowingly commits any assault upon the person of a police officer, sheriff, deputy sheriff, highway patrolman,

corrections personnel, or state peace officer employed or duly appointed by any state governmental agency to enforce state laws while ~~said~~ the officer is in the performance of his or her duties is punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. Every person who, without justifiable or excusable cause knowingly commits battery or assault and battery upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other state peace officer employed or duly appointed by any state governmental agency to enforce state laws while ~~said~~ the officer is in the performance of his or her duties, upon conviction, shall be guilty of a felony punishable by imprisonment of not more than five (5) years in ~~a state correctional institution~~ the custody of the Department of Corrections or county jail for a period not to exceed one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

C. Every person who, without justifiable or excusable cause, knowingly commits battery or assault and battery in conjunction with the use of a chemical aerosol spray, as defined in subsection K of Section 644 of this title, upon the person of a police officer, sheriff, deputy sheriff, highway patrolman, corrections personnel, or other state peace officer employed or duly appointed by any state governmental agency to enforce state laws while the officer is in the performance of his or her duties shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than seven (7) years, or by a fine not exceeding Seven Thousand Dollars (\$7,000.00), or by both such fine and imprisonment.

D. As used in this section and in Section 650 of this title, "corrections personnel" means any person, employed or duly appointed

by the state or by a political subdivision, who has direct contact with inmates of a jail or state correctional facility, and includes but is not limited to, Department of Corrections personnel in job classifications requiring direct contact with inmates, persons providing vocational-technical training to inmates, education personnel who have direct contact with inmates because of education programs for inmates, and persons employed or duly appointed by county or municipal jails to supervise inmates or to provide medical treatment or meals to inmates of jails.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 650, is amended to read as follows:

Section 650. A. Every person who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery upon the person of a police officer, sheriff, deputy sheriff or highway patrolman, corrections personnel as defined in Section 649 of this title, or any state peace officer employed by any state governmental agency to enforce state laws, while ~~said~~ the officer is in the performance of his or her duties shall, upon conviction ~~thereof,~~ be guilty of a felony, ~~which shall be punishable by imprisonment in a state correctional institution~~ the custody of the Department of Corrections for not more than five (5) years, or county jail for a period not to exceed one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

B. Every person who, without justifiable or excusable cause, knowingly commits any aggravated assault and battery in conjunction with the use of a chemical aerosol spray, as defined in subsection K of Section 644 of this title, upon the person of a police officer, sheriff, deputy sheriff or highway patrolman, corrections personnel as defined in Section 649 of this title, or any state peace officer employed by any state governmental agency to enforce state laws, while the officer is in the performance of his or her duties shall,

upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than eight (8) years, or by a fine not exceeding Eight Thousand Dollars (\$8,000.00), or by both such fine and imprisonment.

C. This section shall not supersede any other act or acts, but shall be cumulative thereto.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 681, is amended to read as follows:

Section 681. A. Any person who is guilty of an assault with intent to commit any felony, except an assault with intent to kill, the punishment for which assault is not otherwise prescribed in this code, shall, upon conviction, be guilty of a felony punishable by imprisonment in the ~~State Penitentiary not exceeding~~ custody of the Department of Corrections for not more than five (5) years, or in a county jail not exceeding one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. Any person who is guilty of an assault with the use of a chemical aerosol spray, as defined in subsection K of Section 644 of this title, and with intent to commit any felony shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not more than six (6) years, or by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 801, is amended to read as follows:

Section 801. Any person or persons who, with the use of any firearms, chemical aerosol spray as defined in subsection K of Section 644 of this title, or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or

robs any person or persons, or who robs or attempts to rob any place of business, residence or banking institution or any other place inhabited or attended by any person or persons at any time, either day or night, shall be guilty of a felony and, upon conviction ~~therefor~~, shall suffer punishment by imprisonment for life in the ~~State Penitentiary~~ custody of the Department of Corrections, or for a period of time of not less than five (5) years, at the discretion of the court, or the jury trying the same.

Upon conviction ~~therefor~~, any person guilty of three separate and distinct felonies, in violation of this section shall suffer punishment by imprisonment for life in the ~~State Penitentiary~~ custody of the Department of Corrections, or for a period of time of not less than ten (10) years, and it is mandatory upon the court to impose no less than the minimum sentence of ten (10) years. The sentence imposed upon such person shall not be reduced to less than ten (10) calendar years, nor suspended, nor shall any person be eligible for probation or parole or receive any deduction from his sentence for good conduct until he shall have served ten (10) calendar years of such sentence.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 1272, as amended by Section 1, Chapter 465, O.S.L. 2003 (21 O.S. Supp. 2004, Section 1272), is amended to read as follows:

Section 1272.

UNLAWFUL CARRY

A. It shall be unlawful for any person to carry upon or about his or her person, or in a purse or other container belonging to the person, any pistol, revolver, shotgun or rifle whether loaded or unloaded or any dagger, bowie knife, dirk knife, switchblade knife, spring-type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife, blackjack, loaded cane, billy, hand chain, metal knuckles, or any other offensive weapon, whether

such weapon be concealed or unconcealed, except this section shall not prohibit:

1. The proper use of guns and knives for hunting, fishing, educational or recreational purposes;

2. The carrying or use of weapons in a manner otherwise permitted by statute or authorized by the Oklahoma Self-Defense Act;

3. The carrying, possession and use of any weapon by a peace officer or other person authorized by law to carry a weapon in the performance of official duties and in compliance with the rules of the employing agency; ~~or~~

4. The carrying and use of firearms and other weapons provided in this subsection when used for the purpose of living history reenactment. For purposes of this paragraph, "living history reenactment" means depiction of historical characters, scenes, historical life or events for entertainment, education, or historical documentation through the wearing or use of period, historical, antique or vintage clothing, accessories, firearms, weapons, and other implements of the historical period; or

5. The carrying and use of a chemical aerosol spray, as defined in subsection K of Section 644 of this title, by any person for self-defense purposes.

B. Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor punishable as provided in Section 1276 of this title.

SECTION 8. This act shall become effective November 1, 2005.

50-1-5597 GRS 01/06/05