

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 2003 By: Nichols of the Senate  
3 and  
4 Peters of the House  
5  
6

7 ( crimes and punishments - domestic abuse -  
8 consequences -  
9 effective date )  
10  
11

12 AUTHOR: Add the following House Coauthor: McCullough

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
14 entire bill and insert

15 "An Act relating to crimes and punishments; amending  
16 21 O.S. 2001, Section 644, as last amended by  
17 Section 1, Chapter 284, O.S.L. 2006 (21 O.S. Supp.  
18 2007, Section 644), which relates to domestic abuse;  
19 stating consequences for failure to attend certain  
20 treatment program; making any guilty plea or finding  
of guilt for certain violations constitute a  
conviction; and providing an effective date.

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

22 SECTION 1. AMENDATORY 21 O.S. 2001, Section 644, as last  
23 amended by Section 1, Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2007,  
24 Section 644), is amended to read as follows:

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

5 B. Assault and battery shall be punishable by imprisonment in a  
6 county jail not exceeding ninety (90) days, or by a fine of not more  
7 than One Thousand Dollars (\$1,000.00), or by both such fine and  
8 imprisonment.

9 C. Any person who commits any assault and battery against a  
10 current or former spouse, a present spouse of a former spouse,  
11 parents, a foster parent, a child, a person otherwise related by  
12 blood or marriage, a person with whom the defendant is in a dating  
13 relationship as defined by Section 60.1 of Title 22 of the Oklahoma  
14 Statutes, an individual with whom the defendant has had a child, a  
15 person who formerly lived in the same household as the defendant, or  
16 a person living in the same household as the defendant shall be  
17 guilty of domestic abuse. Upon conviction, the defendant shall be  
18 punished by imprisonment in the county jail for not more than one  
19 (1) year, or by a fine not exceeding Five Thousand Dollars  
20 (\$5,000.00), or by both such fine and imprisonment. Upon conviction  
21 for a second or subsequent offense, the person shall be punished by  
22 imprisonment in the custody of the Department of Corrections for not  
23 more than four (4) years, or by a fine not exceeding Five Thousand  
24 Dollars (\$5,000.00), or by both such fine and imprisonment. The

1 provisions of Section 51.1 of this title shall not apply to any  
2 second or subsequent offense.

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

11 E. Any person convicted of domestic abuse as defined in  
12 subsection C of this section that was committed in the presence of a  
13 child shall be punished by imprisonment in the county jail for not  
14 less than six (6) months nor more than one (1) year, or by a fine  
15 not exceeding Five Thousand Dollars (\$5,000.00), or by both such  
16 fine and imprisonment. Any person convicted of a second or  
17 subsequent domestic abuse as defined in subsection C of this section  
18 that was committed in the presence of a child shall be punished by  
19 imprisonment in the custody of the Department of Corrections for not  
20 less than one (1) year nor more than five (5) years, or by a fine  
21 not exceeding Seven Thousand Dollars (\$7,000.00), or by both such  
22 fine and imprisonment. The provisions of Section 51.1 of this title  
23 shall not apply to any second or subsequent offense. For every  
24 conviction of domestic abuse, the court shall:

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

5 2. a. The court shall require the defendant to participate  
6 in counseling or undergo treatment for domestic abuse  
7 by an individual licensed practitioner or a domestic  
8 abuse treatment program certified by the Attorney  
9 General. If the defendant is ordered to participate  
10 in a domestic abuse counseling or treatment program,  
11 the order shall require the defendant to attend the  
12 program for a minimum of fifty-two (52) weeks,  
13 complete the program, and be evaluated before and  
14 after attendance of the program by a program counselor  
15 or a private counselor. Three unexcused absences in  
16 succession or seven unexcused absences in a period of  
17 fifty-two (52) weeks from any court-ordered domestic  
18 abuse counseling or treatment program shall be prima  
19 facie evidence of the violation of the conditions of  
20 probation for the district attorney to seek  
21 acceleration or revocation of any probation entered by  
22 the court.

23 b. A program for anger management, couples counseling, or  
24 family and marital counseling shall not solely qualify

1 for the counseling or treatment requirement for  
2 domestic abuse pursuant to this subsection. The  
3 counseling may be ordered in addition to counseling  
4 specifically for the treatment of domestic abuse or  
5 per evaluation as set forth below. If, after  
6 sufficient evaluation and attendance at required  
7 counseling sessions, the domestic violence treatment  
8 program or licensed professional determines that the  
9 defendant does not evaluate as a perpetrator of  
10 domestic violence or does evaluate as a perpetrator of  
11 domestic violence and should complete other programs  
12 of treatment simultaneously or prior to domestic  
13 violence treatment, including but not limited to  
14 programs related to the mental health, apparent  
15 substance or alcohol abuse or inability or refusal to  
16 manage anger, the defendant shall be ordered to  
17 complete the counseling as per the recommendations of  
18 the domestic violence treatment program or licensed  
19 professional;

- 20 3. a. The court shall set a review hearing no more than one  
21 hundred twenty (120) days after the defendant is  
22 ordered to participate in a domestic abuse counseling  
23 program or undergo treatment for domestic abuse to  
24 assure the attendance and compliance of the defendant

1 with the provisions of this subsection and the  
2 domestic abuse counseling or treatment requirements.  
3 Three unexcused absences in succession or seven  
4 unexcused absences in a period of fifty-two (52) weeks  
5 from any court-ordered domestic abuse counseling or  
6 treatment program shall be prima facie evidence of the  
7 violation of the conditions of probation for the  
8 district attorney to seek acceleration or revocation  
9 of any probation entered by the court.

10 b. The court shall set a second review hearing after the  
11 completion of the counseling or treatment to assure  
12 the attendance and compliance of the defendant with  
13 the provisions of this subsection and the domestic  
14 abuse counseling or treatment requirements. The court  
15 shall retain continuing jurisdiction over the  
16 defendant during the course of ordered counseling  
17 through the final review hearing;

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

22 5. At any review hearing, if the defendant is not  
23 satisfactorily attending individual counseling or a domestic abuse  
24 counseling or treatment program or is not in compliance with any

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

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

13 7. If funding is available, a referee may be appointed and  
14 assigned by the presiding judge of the district court to hear  
15 designated cases set for review under this subsection. Reasonable  
16 compensation for the referees shall be fixed by the presiding judge.  
17 The referee shall meet the requirements and perform all duties in  
18 the same manner and procedure as set forth in Sections 7003-8.6 and  
19 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees  
20 appointed in juvenile proceedings.

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

23 F. As used in subsection E of this section, "in the presence of  
24 a child" means in the physical presence of a child; or having

1 knowledge that a child is present and may see or hear an act of  
2 domestic violence. For the purposes of subsections C and E of this  
3 section, "child" may be any child whether or not related to the  
4 victim or the defendant.

5 G. For the purposes of subsections C and E of this section, any  
6 conviction for assault and battery against a current or former  
7 spouse, a present spouse of a former spouse, parents, a foster  
8 parent, a child, a person otherwise related by blood or marriage, a  
9 person with whom the defendant is in a dating relationship as  
10 defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an  
11 individual with whom the defendant has had a child, a person who  
12 formerly lived in the same household as the defendant, or any person  
13 living in the same household as the defendant, shall constitute a  
14 sufficient basis for a felony charge:

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

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

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

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

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

24

1 1. Attend a treatment program for domestic abusers certified by  
2 the Attorney General;

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 Attorney General.

8 J. 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 K. 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 L. Any plea of guilty or finding of guilt for a violation of  
21 subsection C, D, E, G or H of this section shall constitute a  
22 conviction of the offense for the purpose of this act or any other  
23 criminal statute under which the existence of a prior conviction is  
24 relevant.

