

1 ENGROSSED HOUSE AMENDMENT

TO

2 ENGROSSED SENATE BILL NO. 2104

By: Leftwich of the Senate

3 and

4 Piatt of the House

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6

7 (suspension of sentencing - limitation on arrest -

8 effective date)

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10 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
11 entire bill and insert

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14 "An Act relating to domestic abuse; amending 21 O.S.
15 2001, Section 644, as last amended by Section 1,
16 Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2007,
17 Section 644), which relates to assault and battery;
18 allowing suspension of sentencing under certain
19 circumstances; requiring presentation of certain
20 proof to the court; amending 22 O.S. 2001, Section
21 60.6, as last amended by Section 5, Chapter 156,
22 O.S.L. 2007, and Section 6, Chapter 466, O.S.L.
23 2002, as amended by Section 3, Chapter 516, O.S.L.
24 2004 (22 O.S. Supp. 2007, Sections 60.6 and 60.16),
which relate to the Protection from Domestic Abuse
Act; allowing suspension of sentencing under certain
circumstances; requiring presentation of certain
proof to the court; removing limitation on certain
arrest; and providing an effective date.

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

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

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

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

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

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

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

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

1 fine and imprisonment. The provisions of Section 51.1 of this title
2 shall not apply to any second or subsequent offense. For every
3 conviction of domestic abuse, the court shall:

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

8 2. a. The court shall require the defendant to participate
9 in counseling or undergo treatment for domestic abuse
10 by an individual licensed practitioner or a domestic
11 abuse treatment program certified by the Attorney
12 General. If the defendant is ordered to participate
13 in a domestic abuse counseling or treatment program,
14 the order shall require the defendant to attend the
15 program for a minimum of fifty-two (52) weeks,
16 complete the program, and be evaluated before and
17 after attendance of the program by a program counselor
18 or a private counselor.

19 b. A program for anger management, couples counseling, or
20 family and marital counseling shall not solely qualify
21 for the counseling or treatment requirement for
22 domestic abuse pursuant to this subsection. The
23 counseling may be ordered in addition to counseling
24 specifically for the treatment of domestic abuse or

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

- 16 3. a. The court shall set a review hearing no more than one
17 hundred twenty (120) days after the defendant is
18 ordered to participate in a domestic abuse counseling
19 program or undergo treatment for domestic abuse to
20 assure the attendance and compliance of the defendant
21 with the provisions of this subsection and the
22 domestic abuse counseling or treatment requirements.
23 The court may suspend sentencing of the defendant
24 until the defendant has presented proof to the court

1 of enrollment in a program of treatment for domestic
2 abuse by an individual licensed practitioner or a
3 domestic abuse treatment program certified by the
4 Attorney General and attendance at weekly sessions at
5 such program. Such proof shall be presented to the
6 court by the defendant no later than one hundred
7 twenty (120) days after the defendant is ordered to
8 such counseling or treatment. At such time the court
9 may complete sentencing, beginning the period of the
10 sentence from the date that proof of enrollment is
11 presented to the court, and schedule reviews as
12 required by subparagraphs a and b of this paragraph
13 and paragraphs 4 and 5 of this subsection.

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

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

3 5. At any review hearing, if the defendant is not
4 satisfactorily attending individual counseling or a domestic abuse
5 counseling or treatment program or is not in compliance with any
6 domestic abuse counseling or treatment requirements, the court may
7 order the defendant to further or continue counseling, treatment, or
8 other necessary services. The court may revoke all or any part of a
9 suspended sentence, deferred sentence, or probation pursuant to
10 Section 991b of Title 22 of the Oklahoma Statutes and subject the
11 defendant to any or all remaining portions of the original sentence;

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

18 7. If funding is available, a referee may be appointed and
19 assigned by the presiding judge of the district court to hear
20 designated cases set for review under this subsection. Reasonable
21 compensation for the referees shall be fixed by the presiding judge.
22 The referee shall meet the requirements and perform all duties in
23 the same manner and procedure as set forth in Sections 7003-8.6 and
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1 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees
2 appointed in juvenile proceedings.

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

5 F. As used in subsection E of this section, "in the presence of
6 a child" means in the physical presence of a child; or having
7 knowledge that a child is present and may see or hear an act of
8 domestic violence. For the purposes of subsections C and E of this
9 section, "child" may be any child whether or not related to the
10 victim or the defendant.

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

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

23 2. If that conviction is rendered in any municipal court of
24 record of this or any other state for which any jail time was

1 served; provided, no conviction in a municipal court of record
2 entered prior to November 1, 1997, shall constitute a prior
3 conviction for purposes of a felony charge.

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

1 air passages of the neck as a result of external pressure on the
2 neck.

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

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

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

10 3. Attend, complete, and be evaluated before and after
11 attendance by a treatment program for domestic abusers, certified by
12 the Attorney General.

13 J. There shall be no charge of fees or costs to any victim of
14 domestic violence, stalking, or sexual assault in connection with
15 the prosecution of a domestic violence, stalking, or sexual assault
16 offense in this state.

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

1 L. For purposes of subsection D of this section, "great bodily
2 injury" means bone fracture, protracted and obvious disfigurement,
3 protracted loss or impairment of the function of a body part, organ
4 or mental faculty, or substantial risk of death.

5 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.6, as
6 last amended by Section 5, Chapter 156, O.S.L. 2007 (22 O.S. Supp.
7 2007, Section 60.6), is amended to read as follows:

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

10 1. Has been served with an ex parte or final protective order
11 or foreign protective order and is in violation of such protective
12 order, upon conviction, shall be guilty of a misdemeanor and shall
13 be punished by a fine of not more than One Thousand Dollars
14 (\$1,000.00) or by a term of imprisonment in the county jail of not
15 more than one (1) year, or both such fine and imprisonment; and

16 2. After a previous conviction of a violation of a protective
17 order, is convicted of a second or subsequent offense pursuant to
18 the provisions of this section shall, upon conviction, be guilty of
19 a felony and shall be punished by a term of imprisonment in the
20 custody of the Department of Corrections for not less than one (1)
21 year nor more than three (3) years, or by a fine of not less than
22 Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars
23 (\$10,000.00), or by both such fine and imprisonment.

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1 B. 1. Any person who has been served with an ex parte or final
2 protective order or foreign protective order who violates the
3 protective order and causes physical injury or physical impairment
4 to the plaintiff or to any other person named in said protective
5 order shall, upon conviction, be guilty of a misdemeanor and shall
6 be punished by a term of imprisonment in the county jail for not
7 less than twenty (20) days nor more than one (1) year. In addition
8 to the term of imprisonment, the person may be punished by a fine
9 not to exceed Five Thousand Dollars (\$5,000.00).

10 2. Any person who is convicted of a second or subsequent
11 violation of a protective order which causes physical injury or
12 physical impairment to a plaintiff or to any other person named in
13 the protective order shall be guilty of a felony and shall be
14 punished by a term of imprisonment in the custody of the Department
15 of Corrections of not less than one (1) year nor more than five (5)
16 years, or by a fine of not less than Three Thousand Dollars
17 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by
18 both such fine and imprisonment.

19 3. In determining the term of imprisonment required by this
20 section, the jury or sentencing judge shall consider the degree of
21 physical injury or physical impairment to the victim.

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

1 C. The minimum sentence of imprisonment issued pursuant to the
2 provisions of paragraph 2 of subsection A and paragraph 1 of
3 subsection B of this section shall not be subject to statutory
4 provisions for suspended sentences, deferred sentences or probation,
5 provided the court may subject any remaining penalty under the
6 jurisdiction of the court to the statutory provisions for suspended
7 sentences, deferred sentences or probation.

8 D. In addition to any other penalty specified by this section,
9 the court shall require a defendant to undergo the treatment or
10 participate in the counseling services necessary to bring about the
11 cessation of domestic abuse against the victim or to bring about the
12 cessation of stalking or harassment of the victim. For every
13 conviction of violation of a protective order:

14 1. The court shall specifically order as a condition of a
15 suspended sentence or probation that a defendant participate in
16 counseling or undergo treatment to bring about the cessation of
17 domestic abuse as specified in paragraph 2 of this subsection;

18 2. a. The court shall require the defendant to participate
19 in counseling or undergo treatment for domestic abuse
20 by an individual licensed practitioner or a domestic
21 abuse treatment program certified by the Attorney
22 General. If the defendant is ordered to participate
23 in a domestic abuse counseling or treatment program,
24 the order shall require the defendant to attend the

1 program for a minimum of fifty-two (52) weeks,
2 complete the program, and be evaluated before and
3 after attendance of the program by a program counselor
4 or a private counselor.

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

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

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 may suspend sentencing of the defendant until the
16 defendant has presented proof to the court of
17 enrollment in a program of treatment for domestic
18 abuse by an individual licensed practitioner or a
19 domestic abuse treatment program certified by the
20 Attorney General and attendance at weekly sessions at
21 such program. Such proof shall be presented to the
22 court by the defendant no later than one hundred
23 twenty (120) days after the defendant is ordered to
24 such counseling or treatment. At such time the court

1 may complete sentencing, beginning the period of the
2 sentence from the date that proof of enrollment is
3 presented to the court, and schedule reviews as
4 required by subparagraphs a and b of this paragraph
5 and paragraphs 4 and 5 of this subsection. The court
6 shall retain continuing jurisdiction over the
7 defendant during the course of ordered counseling
8 through the final review hearing;

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

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

22 6. At the first review hearing, the court shall require the
23 defendant to appear in court. Thereafter, for any subsequent review
24 hearings, the court may accept a report on the progress of the

1 defendant from individual counseling, domestic abuse counseling, or
2 the treatment program. There shall be no requirement for the victim
3 to attend review hearings; and

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

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

14 F. When a minor child violates the provisions of any protective
15 order, the violation shall be heard in a juvenile proceeding and the
16 court may order the child and the parent or parents of the child to
17 participate in family counseling services necessary to bring about
18 the cessation of domestic abuse against the victim and may order
19 community service hours to be performed in lieu of any fine or
20 imprisonment authorized by this section.

21 G. 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:

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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 final protective order or for any violation of a protective
5 order; and

6 3. Attend, complete, and be evaluated before and after
7 attendance by a treatment program for domestic abusers certified by
8 the Attorney General.

9 H. At no time, under any proceeding, may a person protected by
10 a protective order be held to be in violation of that protective
11 order. Only a defendant against whom a protective order has been
12 issued may be held to have violated the order.

13 SECTION 3. AMENDATORY Section 6, Chapter 466, O.S.L.
14 2002, as amended by Section 3, Chapter 516, O.S.L. 2004 (22 O.S.
15 Supp. 2007, Section 60.16), is amended to read as follows:

16 Section 60.16 A. A peace officer shall not discourage a victim
17 of domestic abuse from pressing charges against the assailant of the
18 victim.

19 B. 1. A peace officer may arrest without a warrant a person
20 anywhere, including a place of residence, if the peace officer has
21 probable cause to believe the person within the preceding seventy-
22 two (72) hours has committed an act of domestic abuse as defined by
23 Section 60.1 of this title, although the assault did not take place
24 in the presence of the peace officer. ~~A peace officer may not~~

1 ~~arrest a person pursuant to this section without first observing a~~
2 ~~recent physical injury to, or an impairment of the physical~~
3 ~~condition of, the alleged victim.~~

4 2. An arrest, when made pursuant to this section, shall be
5 based on an investigation by the peace officer of the circumstances
6 surrounding the incident, past history of violence between the
7 parties, statements of any children present in the residence, and
8 any other relevant factors. A determination by the peace officer
9 shall be made pursuant to the investigation as to which party is the
10 dominant aggressor in the situation. A peace officer may arrest the
11 dominant aggressor.

12 C. When the court is not open for business, the victim of
13 domestic abuse may request a petition for an emergency temporary
14 order of protection. The peace officer making the preliminary
15 investigation shall:

16 1. Provide the victim with a petition for an emergency
17 temporary order of protection and, if necessary, assist the victim
18 in completing the petition form. The petition shall be in
19 substantially the same form as provided by Section 60.2 of this
20 title for a petition for protective order;

21 2. Immediately notify, by telephone or otherwise, a judge of
22 the district court of the request for an emergency temporary order
23 of protection and describe the circumstances. The judge shall

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1 | inform the peace officer of the decision to approve or disapprove
2 | the emergency temporary order;

3 | 3. Inform the victim whether the judge has approved or
4 | disapproved the emergency temporary order. If an emergency
5 | temporary order has been approved, the officer shall provide the
6 | victim, or a responsible adult if the victim is a minor child or an
7 | incompetent person, with a copy of the petition and a written
8 | statement signed by the officer attesting that the judge has
9 | approved the emergency temporary order of protection and notify the
10 | victim that the emergency temporary order shall be effective only
11 | until the close of business on the next day that the court is open
12 | for business;

13 | 4. Notify the person subject to the emergency temporary
14 | protection order of the issuance and conditions of the order.
15 | Notification pursuant to this paragraph may be made personally by
16 | the officer or in writing. A copy of the petition and the statement
17 | of the officer attesting to the order of the judge shall be made
18 | available to such person; and

19 | 5. File a copy of the petition and the statement of the officer
20 | with the district court of the county immediately upon the opening
21 | of the court on the next day the court is open for business.

22 | D. The forms utilized by law enforcement agencies in carrying
23 | out the provisions of this section may be substantially similar to
24 | those used under Section 60.2 of this title.

