

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 1897

By: Hamilton, Shannon, Inman,  
Kiesel, Harrison,  
Blackwell, Johnson  
(Dennis), Terrill, Kern,  
McMullen, Luttrell, Dank  
and Shumate of the House

8 and

9 Leftwich, Paddack, Rice,  
10 Garrison, Jolley and Sykes  
of the Senate

11  
12  
13 CONFERENCE COMMITTEE SUBSTITUTE

14 An Act relating to crimes and punishments; amending  
15 21 O.S. 2001, Section 644, as last amended by Section  
16 1 of Enrolled Senate Bill No. 2003 of the 2nd Session  
17 of the 51st Oklahoma Legislature, which relates to  
18 assault and battery and domestic abuse; providing  
19 penalties for domestic abuse against a pregnant  
20 woman; amending Section 1, Chapter 209, O.S.L. 2003,  
21 as last amended by Section 20, Chapter 261, O.S.L.  
22 2007 (21 O.S. Supp. 2007, Section 1125), which  
23 relates to zone of safety; clarifying and defining  
24 certain term; 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 last  
amended by Section 1 of Enrolled Senate Bill No. 2003 of the 2nd

1 Session of the 51st Oklahoma Legislature, is amended to read as  
2 follows:

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

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

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

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

5 D. Any person convicted of domestic abuse committed against a  
6 pregnant woman with knowledge of the pregnancy shall be guilty of a  
7 misdemeanor, punishable by imprisonment in the county jail for not  
8 more than one (1) year.

9 Any person convicted of a second or subsequent offense of  
10 domestic abuse against a pregnant woman with knowledge of the  
11 pregnancy shall be guilty of a felony, punishable by imprisonment in  
12 the custody of the Department of Corrections for not less than ten  
13 (10) years.

14 Any person convicted of domestic abuse committed against a  
15 pregnant woman with knowledge of the pregnancy and a miscarriage  
16 occurs or injury to the unborn child occurs shall be guilty of a  
17 felony, punishable by imprisonment in the custody of the Department  
18 of Corrections for not less than twenty (20) years.

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

1 shall apply to any second or subsequent conviction of a violation of  
2 this subsection.

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

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

21 2. a. The court shall require the defendant to participate  
22 in counseling or undergo treatment for domestic abuse  
23 by an individual licensed practitioner or a domestic  
24 abuse treatment program certified by the Attorney

1 General. If the defendant is ordered to participate  
2 in a domestic abuse counseling or treatment program,  
3 the order shall require the defendant to attend the  
4 program for a minimum of fifty-two (52) weeks,  
5 complete the program, and be evaluated before and  
6 after attendance of the program by a program counselor  
7 or a private counselor. Three unexcused absences in  
8 succession or seven unexcused absences in a period of  
9 fifty-two (52) weeks from any court-ordered domestic  
10 abuse counseling or treatment program shall be prima  
11 facie evidence of the violation of the conditions of  
12 probation for the district attorney to seek  
13 acceleration or revocation of any probation entered by  
14 the court.

15 b. A program for anger management, couples counseling, or  
16 family and marital counseling shall not solely qualify  
17 for the counseling or treatment requirement for  
18 domestic abuse pursuant to this subsection. The  
19 counseling may be ordered in addition to counseling  
20 specifically for the treatment of domestic abuse or  
21 per evaluation as set forth below. If, after  
22 sufficient evaluation and attendance at required  
23 counseling sessions, the domestic violence treatment  
24 program or licensed professional determines that the

1 defendant does not evaluate as a perpetrator of  
2 domestic violence or does evaluate as a perpetrator of  
3 domestic violence and should complete other programs  
4 of treatment simultaneously or prior to domestic  
5 violence treatment, including but not limited to  
6 programs related to the mental health, apparent  
7 substance or alcohol abuse or inability or refusal to  
8 manage anger, the defendant shall be ordered to  
9 complete the counseling as per the recommendations of  
10 the domestic violence treatment program or licensed  
11 professional;

- 12 3. a. The court shall set a review hearing no more than one  
13 hundred twenty (120) days after the defendant is  
14 ordered to participate in a domestic abuse counseling  
15 program or undergo treatment for domestic abuse to  
16 assure the attendance and compliance of the defendant  
17 with the provisions of this subsection and the  
18 domestic abuse counseling or treatment requirements.  
19 Three unexcused absences in succession or seven  
20 unexcused absences in a period of fifty-two (52) weeks  
21 from any court-ordered domestic abuse counseling or  
22 treatment program shall be prima facie evidence of the  
23 violation of the conditions of probation for the  
24

1 district attorney to seek acceleration or revocation  
2 of any probation entered by the court.

3 b. The court shall set a second review hearing after the  
4 completion of the counseling or treatment to assure  
5 the attendance and compliance of the defendant with  
6 the provisions of this subsection and the domestic  
7 abuse counseling or treatment requirements. The court  
8 shall retain continuing jurisdiction over the  
9 defendant during the course of ordered counseling  
10 through the final review hearing;

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

15 5. 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           6. At the first review hearing, the court shall require the  
2 defendant to appear in court. Thereafter, for any subsequent review  
3 hearings, the court may accept a report on the progress of the  
4 defendant from individual counseling, domestic abuse counseling, or  
5 the treatment program. There shall be no requirement for the victim  
6 to attend review hearings; and

7           7. 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 shall 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           ~~F.~~ G. As used in subsection ~~E~~ F of this section, "in the  
18 presence of a child" means in the physical presence of a child; or  
19 having knowledge that a child is present and may see or hear an act  
20 of domestic violence. For the purposes of subsections C and ~~E~~ F of  
21 this section, "child" may be any child whether or not related to the  
22 victim or the defendant.

23           ~~G.~~ H. For the purposes of subsections C and ~~E~~ F of this  
24 section, any conviction for assault and battery against a current or

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

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

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

16 ~~H-~~ I. Any person who commits any assault and battery with  
17 intent to cause great bodily harm by strangulation or attempted  
18 strangulation against a current or former spouse, a present spouse  
19 of a former spouse, parents, a foster parent, a child, a person  
20 otherwise related by blood or marriage, a person with whom the  
21 defendant is in a dating relationship as defined by Section 60.1 of  
22 Title 22 of the Oklahoma Statutes, an individual with whom the  
23 defendant has had a child, a person who formerly lived in the same  
24 household as the defendant, or a person living in the same household

1 as the defendant shall, upon conviction, be guilty of domestic abuse  
2 by strangulation and shall be punished by imprisonment in the  
3 custody of the Department of Corrections for a period of not less  
4 than one (1) year nor more than three (3) years, or by a fine of not  
5 more than Three Thousand Dollars (\$3,000.00), or by both such fine  
6 and imprisonment. Upon a second or subsequent conviction, the  
7 defendant shall be punished by imprisonment in the custody of the  
8 Department of Corrections for a period of not less than three (3)  
9 years nor more than ten (10) years, or by a fine of not more than  
10 Twenty Thousand Dollars (\$20,000.00), or by both such fine and  
11 imprisonment. As used in this subsection, "strangulation" means a  
12 form of asphyxia characterized by closure of the blood vessels or  
13 air passages of the neck as a result of external pressure on the  
14 neck.

15 ~~I.~~ J. Any district court of this state and any judge thereof  
16 shall be immune from any liability or prosecution for issuing an  
17 order that requires a defendant to:

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

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

22 3. Attend, complete, and be evaluated before and after  
23 attendance by a treatment program for domestic abusers, certified by  
24 the Attorney General.

1       ~~J.~~ K. There shall be no charge of fees or costs to any victim  
2 of domestic violence, stalking, or sexual assault in connection with  
3 the prosecution of a domestic violence, stalking, or sexual assault  
4 offense in this state.

5       ~~K.~~ L. In the course of prosecuting any charge of domestic  
6 abuse, stalking, harassment, rape, or violation of a protective  
7 order, the prosecutor shall provide the court, prior to sentencing  
8 or any plea agreement, a local history and any other available  
9 history of past convictions of the defendant within the last ten  
10 (10) years relating to domestic abuse, stalking, harassment, rape,  
11 violation of a protective order, or any other violent misdemeanor or  
12 felony convictions.

13       ~~L.~~ M. Any plea of guilty or finding of guilt for a violation of  
14 subsection C, ~~D~~, E, ~~G~~ F, H or ~~H~~ I of this section shall constitute a  
15 conviction of the offense for the purpose of this act or any other  
16 criminal statute under which the existence of a prior conviction is  
17 relevant.

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

22       SECTION 2.           AMENDATORY           Section 1, Chapter 209, O.S.L.  
23 2003, as last amended by Section 20, Chapter 261, O.S.L. 2007 (21  
24 O.S. Supp. 2007, Section 1125), is amended to read as follows:

1 Section 1125. A. A zone of safety is hereby created around  
2 elementary, junior high, and high schools, licensed child care  
3 centers as defined by the Department of Human Services, playgrounds,  
4 and parks. A person is prohibited from loitering within three  
5 hundred (300) feet of any elementary, junior high, or high school,  
6 licensed child care facility, playground, or park if the person has  
7 been convicted of a crime that requires the person to register  
8 pursuant to the Sex Offenders Registration Act or the person has  
9 been convicted of an offense in another jurisdiction, which offense  
10 if committed or attempted in this state, would have been punishable  
11 as one or more of the offenses listed in Section 582 of Title 57 of  
12 the Oklahoma Statutes and the victim was a child under the age of  
13 thirteen (13) years.

14 B. A person convicted of a violation of subsection A of this  
15 section shall be guilty of a felony punishable by a fine not  
16 exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by  
17 imprisonment in the county jail for a term of not more than one (1)  
18 year, or by both such fine and imprisonment. Any person convicted  
19 of a second or subsequent violation of subsection A of this section  
20 shall be punished by a fine not exceeding Two Thousand Five Hundred  
21 Dollars (\$2,500.00), or by imprisonment in the custody of the  
22 Department of Corrections for a term of not less than three (3)  
23 years, or by both such fine and imprisonment. This proscription of  
24 conduct shall not modify or remove any restrictions currently

1 applicable to the person by court order, conditions of probation or  
2 as provided by other provision of law.

3 C. 1. A person shall be exempt from the prohibition of this  
4 section regarding a school or a licensed child care facility only  
5 under the following circumstances:

6 a. the person is the custodial parent or legal guardian  
7 of a child who is an enrolled student at the school or  
8 child care facility, and

9 b. the person is enrolling, delivering or retrieving such  
10 child at the school or child care facility during  
11 regular school or facility hours or for school-  
12 sanctioned or child-care-facility-sanctioned  
13 extracurricular activities.

14 2. This exception shall not be construed to modify or remove  
15 any restrictions applicable to the person by court order, conditions  
16 of probation, or as provided by other provision of law.

17 D. The provisions of subsection A of this section shall not  
18 apply to any person receiving medical treatment at a hospital or  
19 other facility certified or licensed by the State of Oklahoma to  
20 provide medical services. As used in this subsection, "medical  
21 treatment" shall not include any form of psychological, social or  
22 rehabilitative counseling services or treatment programs for sex  
23 offenders.

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1 E. Nothing in this section shall prohibit a person, who is  
2 registered as a sex offender pursuant to the Sex Offenders  
3 Registration Act, from attending a recognized church or religious  
4 denomination for worship; provided, the person has notified the  
5 religious leader of his or her status as a registered sex offender  
6 and the person has been granted written permission by the religious  
7 leader.

8 F. For purpose of prosecution of any violation of this section,  
9 the provisions of Section 51.1 of this title shall not apply.

10 SECTION 3. This act shall become effective November 1, 2008.

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