

1 ENGROSSED SENATE  
2 BILL NO. 2104

By: Leftwich of the Senate  
and  
Piatt of the House

3  
4  
5  
6  
7 [ suspension of sentencing - limitation on arrest -  
8 effective date ]  
9  
10

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

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

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

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

23 C. Any person who commits any assault and battery against a  
24 current or former spouse, a present spouse of a former spouse,

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

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

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

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

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

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

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 The court may suspend sentencing of the defendant  
11 until the defendant has presented proof to the court  
12 of enrollment in a program of treatment for domestic  
13 abuse by an individual licensed practitioner or a  
14 domestic abuse treatment program certified by the  
15 Attorney General and attendance at weekly sessions at  
16 such program. Such proof shall be presented to the  
17 court by the defendant no later than one hundred  
18 twenty (120) days after the defendant is ordered to  
19 such counseling or treatment. At such time the court  
20 may complete sentencing, beginning the period of the  
21 sentence from the date that proof of enrollment is  
22 presented to the court, and schedule reviews as  
23 required by subparagraphs a and b of this paragraph  
24 and paragraphs 4 and 5 of this subsection.

1           b. The court shall set a second review hearing after the  
2           completion of the counseling or treatment to assure  
3           the attendance and compliance of the defendant with  
4           the provisions of this subsection and the domestic  
5           abuse counseling or treatment requirements. 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 The defendant may be required to pay all or part of the cost of  
13 the counseling or treatment, in the discretion of the court.

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

20 G. For the purposes of subsections C and E of this section, any  
21 conviction for assault and battery against a current or former  
22 spouse, a present spouse of a former spouse, parents, a foster  
23 parent, a child, a person otherwise related by blood or marriage, a  
24 person with whom the defendant is in a dating relationship as

1 defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an  
2 individual with whom the defendant has had a child, a person who  
3 formerly lived in the same household as the defendant, or any person  
4 living in the same household as the defendant, shall constitute a  
5 sufficient basis for a felony charge:

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

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

13 H. Any person who commits any assault and battery with intent  
14 to cause great bodily harm by strangulation or attempted  
15 strangulation against a current or former spouse, a present spouse  
16 of a former spouse, parents, a foster parent, a child, a person  
17 otherwise related by blood or marriage, a person with whom the  
18 defendant is in a dating relationship as defined by Section 60.1 of  
19 Title 22 of the Oklahoma Statutes, an individual with whom the  
20 defendant has had a child, a person who formerly lived in the same  
21 household as the defendant, or a person living in the same household  
22 as the defendant shall, upon conviction, be guilty of domestic abuse  
23 by strangulation and shall be punished by imprisonment in the  
24 custody of the Department of Corrections for a period of not less

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

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

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

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

19 3. Attend, complete, and be evaluated before and after  
20 attendance by a treatment program for domestic abusers, certified by  
21 the Attorney General.

22 J. There shall be no charge of fees or costs to any victim of  
23 domestic violence, stalking, or sexual assault in connection with  
24

1 the prosecution of a domestic violence, stalking, or sexual assault  
2 offense in this state.

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

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

15 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.6, as  
16 last amended by Section 5, Chapter 156, O.S.L. 2007 (22 O.S. Supp.  
17 2007, Section 60.6), is amended to read as follows:

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

20 1. Has been served with an ex parte or final protective order  
21 or foreign protective order and is in violation of such protective  
22 order, upon conviction, shall be guilty of a misdemeanor and shall  
23 be punished by a fine of not more than One Thousand Dollars

24

1 (\$1,000.00) or by a term of imprisonment in the county jail of not  
2 more than one (1) year, or both such fine and imprisonment; and

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

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

20 2. Any person who is convicted of a second or subsequent  
21 violation of a protective order which causes physical injury or  
22 physical impairment to a plaintiff or to any other person named in  
23 the protective order shall be guilty of a felony and shall be  
24 punished by a term of imprisonment in the custody of the Department

1 of Corrections of not less than one (1) year nor more than five (5)  
2 years, or by a fine of not less than Three Thousand Dollars  
3 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by  
4 both such fine and imprisonment.

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

8 4. The provisions of this subsection shall not affect the  
9 applicability of Sections 644, 645, 647 and 652 of Title 21 of the  
10 Oklahoma Statutes.

11 C. The minimum sentence of imprisonment issued pursuant to the  
12 provisions of paragraph 2 of subsection A and paragraph 1 of  
13 subsection B of this section shall not be subject to statutory  
14 provisions for suspended sentences, deferred sentences or probation,  
15 provided the court may subject any remaining penalty under the  
16 jurisdiction of the court to the statutory provisions for suspended  
17 sentences, deferred sentences or probation.

18 D. In addition to any other penalty specified by this section,  
19 the court shall require a defendant to undergo the treatment or  
20 participate in the counseling services necessary to bring about the  
21 cessation of domestic abuse against the victim or to bring about the  
22 cessation of stalking or harassment of the victim. For every  
23 conviction of violation of a protective order:  
24

1           1. The court shall specifically order as a condition of a  
2 suspended sentence or probation that a defendant participate in  
3 counseling or undergo treatment to bring about the cessation of  
4 domestic abuse as 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.

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

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

13 3. a. The court shall set a review hearing no more than one  
14 hundred twenty (120) days after the defendant is  
15 ordered to participate in a domestic abuse counseling  
16 program or undergo treatment for domestic abuse to  
17 assure the attendance and compliance of the defendant  
18 with the provisions of this subsection and the  
19 domestic abuse counseling or treatment requirements.

20 b. The court shall set a second review hearing after the  
21 completion of the counseling or treatment to assure  
22 the attendance and compliance of the defendant with  
23 the provisions of this subsection and the domestic  
24 abuse counseling or treatment requirements. The court

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

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

23           5. At any review hearing, if the defendant is not  
24           satisfactorily attending individual counseling or a domestic abuse

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

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

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

22       E. Ex parte and final protective orders shall include notice of  
23 these penalties.

24

1 F. When a minor child violates the provisions of any protective  
2 order, the violation shall be heard in a juvenile proceeding and the  
3 court may order the child and the parent or parents of the child to  
4 participate in family counseling services necessary to bring about  
5 the cessation of domestic abuse against the victim and may order  
6 community service hours to be performed in lieu of any fine or  
7 imprisonment authorized by this section.

8 G. Any district court of this state and any judge thereof shall  
9 be immune from any liability or prosecution for issuing an order  
10 that requires a defendant to:

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

13 2. Attend counseling or treatment services ordered as part of  
14 any final protective order or for any violation of a protective  
15 order; and

16 3. Attend, complete, and be evaluated before and after  
17 attendance by a treatment program for domestic abusers certified by  
18 the Attorney General.

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

23

24

1 SECTION 3. AMENDATORY Section 6, Chapter 466, O.S.L.  
2 2002, as amended by Section 3, Chapter 516, O.S.L. 2004 (22 O.S.  
3 Supp. 2007, Section 60.16), is amended to read as follows:

4 Section 60.16 A. A peace officer shall not discourage a victim  
5 of domestic abuse from pressing charges against the assailant of the  
6 victim.

7 B. 1. A peace officer may arrest without a warrant a person  
8 anywhere, including a place of residence, if the peace officer has  
9 probable cause to believe the person within the preceding seventy-  
10 two (72) hours has committed an act of domestic abuse as defined by  
11 Section 60.1 of this title, although the assault did not take place  
12 in the presence of the peace officer. ~~A peace officer may not~~  
13 ~~arrest a person pursuant to this section without first observing a~~  
14 ~~recent physical injury to, or an impairment of the physical~~  
15 ~~condition of, the alleged victim.~~

16 2. An arrest, when made pursuant to this section, shall be  
17 based on an investigation by the peace officer of the circumstances  
18 surrounding the incident, past history of violence between the  
19 parties, statements of any children present in the residence, and  
20 any other relevant factors. A determination by the peace officer  
21 shall be made pursuant to the investigation as to which party is the  
22 dominant aggressor in the situation. A peace officer may arrest the  
23 dominant aggressor.

24

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

5 1. Provide the victim with a petition for an emergency  
6 temporary order of protection and, if necessary, assist the victim  
7 in completing the petition form. The petition shall be in  
8 substantially the same form as provided by Section 60.2 of this  
9 title for a petition for protective order;

10 2. Immediately notify, by telephone or otherwise, a judge of  
11 the district court of the request for an emergency temporary order  
12 of protection and describe the circumstances. The judge shall  
13 inform the peace officer of the decision to approve or disapprove  
14 the emergency temporary order;

15 3. Inform the victim whether the judge has approved or  
16 disapproved the emergency temporary order. If an emergency  
17 temporary order has been approved, the officer shall provide the  
18 victim, or a responsible adult if the victim is a minor child or an  
19 incompetent person, with a copy of the petition and a written  
20 statement signed by the officer attesting that the judge has  
21 approved the emergency temporary order of protection and notify the  
22 victim that the emergency temporary order shall be effective only  
23 until the close of business on the next day that the court is open  
24 for business;

