

THE HOUSE OF REPRESENTATIVES
Monday, April 7, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 2003

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2003 - By:
NICHOLS of the Senate and PETERS AND MCCULLOUGH of the House.

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

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

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

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

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

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

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

21 E. Any person convicted of domestic abuse as defined in subsection C of this
22 section that was committed in the presence of a child shall be punished by imprisonment

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

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

13 2. a. The court shall require the defendant to participate in counseling or
14 undergo treatment for domestic abuse by an individual licensed
15 practitioner or a domestic abuse treatment program certified by the
16 Attorney General. If the defendant is ordered to participate in a
17 domestic abuse counseling or treatment program, the order shall
18 require the defendant to attend the program for a minimum of fifty-
19 two (52) weeks, complete the program, and be evaluated before and
20 after attendance of the program by a program counselor or a private
21 counselor. Three unexcused absences in succession or seven unexcused
22 absences in a period of fifty-two (52) weeks from any court-ordered

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1 domestic abuse counseling or treatment program shall be prima facie
2 evidence of the violation of the conditions of probation for the district
3 attorney to seek acceleration or revocation of any probation entered by
4 the court.

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

21 3. a. The court shall set a review hearing no more than one hundred twenty
22 (120) days after the defendant is ordered to participate in a domestic

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

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

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

19 5. At any review hearing, if the defendant is not satisfactorily attending individual
20 counseling or a domestic abuse counseling or treatment program or is not in compliance
21 with any domestic abuse counseling or treatment requirements, the court may order the
22 defendant to further or continue counseling, treatment, or other necessary services. The

1 court may revoke all or any part of a suspended sentence, deferred sentence, or probation
2 pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant
3 to any or all remaining portions of the original sentence;

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

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

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

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

21 G. For the purposes of subsections C and E of this section, any conviction for
22 assault and battery against a current or former spouse, a present spouse of a former

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

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

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

13 H. Any person who commits any assault and battery with intent to cause great
14 bodily harm by strangulation or attempted strangulation against a current or former
15 spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person
16 otherwise related by blood or marriage, a person with whom the defendant is in a dating
17 relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an
18 individual with whom the defendant has had a child, a person who formerly lived in the
19 same household as the defendant, or a person living in the same household as the
20 defendant shall, upon conviction, be guilty of domestic abuse by strangulation and shall
21 be punished by imprisonment in the custody of the Department of Corrections for a
22 period of not less than one (1) year nor more than three (3) years, or by a fine of not more

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

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

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

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

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

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

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

1 stalking, harassment, rape, violation of a protective order, or any other violent
2 misdemeanor or felony convictions.

3 L. Any plea of guilty or finding of guilt for a violation of subsection C, D, E, G or H
4 of this section shall constitute a conviction of the offense for the purpose of this act or any
5 other criminal statute under which the existence of a prior conviction is relevant.

6 M. For purposes of subsection D of this section, “great bodily injury” means bone
7 fracture, protracted and obvious disfigurement, protracted loss or impairment of the
8 function of a body part, organ or mental faculty, or substantial risk of death.

9 SECTION 2. This act shall become effective November 1, 2008.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
11 dated 04-03-08 - DO PASS, As Amended and Coauthored.