

THE HOUSE OF REPRESENTATIVES  
Tuesday, April 15, 2008

Committee Substitute for  
ENGROSSED  
Senate Bill No. 2104

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2104 - By:  
LEFTWICH of the Senate and PIATT of the House.

An Act relating to domestic abuse; 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 assault and battery; allowing suspension of sentencing under certain circumstances; requiring presentation of certain proof to the court; amending 22 O.S. 2001, Section 60.6, as last amended by Section 5, Chapter 156, O.S.L. 2007, and Section 6, Chapter 466, O.S.L. 2002, as amended by Section 3, Chapter 516, O.S.L. 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.

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.

1 B. Assault and battery shall be punishable by imprisonment in a county jail not  
2 exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars  
3 (\$1,000.00), or by both such fine and imprisonment.

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

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

1 provisions of Section 51.1 of this title shall apply to any second or subsequent conviction  
2 of a violation of this subsection.

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

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

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

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

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

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

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~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           4. The provisions of this subsection shall not affect the applicability of Sections 644,  
5 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

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

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

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

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

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

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



1 retain continuing jurisdiction over the defendant during the course of  
2 ordered counseling through the final review hearing;

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

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

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

18 7. If funding is available, a referee may be appointed and assigned by the presiding  
19 judge of the district court to hear designated cases set for review under this subsection.  
20 Reasonable compensation for the referees shall be fixed by the presiding judge. The  
21 referee shall meet the requirements and perform all duties in the same manner and

1 procedure as set forth in Sections 7003-8.6 and 7303-7.5 of Title 10 of the Oklahoma  
2 Statutes pertaining to referees appointed in juvenile proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

5           2. Immediately notify, by telephone or otherwise, a judge of the district court of the  
6 request for an emergency temporary order of protection and describe the circumstances.  
7 The judge shall inform the peace officer of the decision to approve or disapprove the  
8 emergency temporary order;

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

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

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

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

3           SECTION 4. This act shall become effective November 1, 2008.

4           COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,  
5 dated 04-14-08 - DO PASS, As Amended.