

ENGROSSED

House Bill No. 1897

As Amended

ENGROSSED HOUSE BILL NO. 1897 - By: Hamilton, Shannon, Inman, Kiesel, Harrison, Blackwell, Johnson (Dennis), Terrill, Kern, McMullen, Luttrell, Dank and Shumate of the House and Leftwich of the Senate.

[crimes and punishments - assault and battery and domestic abuse - 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, Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2006, Section 644), is amended to read as follows:

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

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

C. Any person who commits any assault and battery against a 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 committed against a
18 pregnant woman with knowledge of the pregnancy shall be guilty of a
19 misdemeanor, punishable by imprisonment in the county jail for not
20 more than one (1) year.

21 Any person convicted of a second or subsequent offense of
22 domestic abuse against a pregnant woman with knowledge of the
23 pregnancy shall be guilty of a felony, punishable by imprisonment in

1 the custody of the Department of Corrections for not less than ten
2 (10) years.

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

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

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

1 imprisonment in the custody of the Department of Corrections for not
2 less than one (1) year nor more than five (5) years, or by a fine
3 not exceeding Seven Thousand Dollars (\$7,000.00), or by both such
4 fine and imprisonment. The provisions of Section 51.1 of this title
5 shall not apply to any second or subsequent offense. For every
6 conviction of domestic abuse, the court shall:

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

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

22 b. A program for anger management, couples counseling, or
23 family and marital counseling shall not solely qualify

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

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

1 assure the attendance and compliance of the defendant
2 with the provisions of this subsection and the
3 domestic abuse counseling or treatment requirements.

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

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

16 5. At any review hearing, if the defendant is not
17 satisfactorily attending individual counseling or a domestic abuse
18 counseling or treatment program or is not in compliance with any
19 domestic abuse counseling or treatment requirements, the court may
20 order the defendant to further or continue counseling, treatment, or
21 other necessary services. The court may revoke all or any part of a
22 suspended sentence, deferred sentence, or probation pursuant to

1 Section 991b of Title 22 of the Oklahoma Statutes and subject the
2 defendant to any or all remaining portions of the original sentence;

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

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

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

19 ~~F~~. G. As used in subsection ~~E~~ F of this section, "in the
20 presence of a child" means in the physical presence of a child; or
21 having knowledge that a child is present and may see or hear an act
22 of domestic violence. For the purposes of subsections C and ~~E~~ F of

1 this section, "child" may be any child whether or not related to the
2 victim or the defendant.

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

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

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

20 ~~H.~~ I. Any person who commits any assault and battery with
21 intent to cause great bodily harm by strangulation or attempted
22 strangulation against a current or former spouse, a present spouse
23 of a former spouse, parents, a foster parent, a child, a person

1 otherwise related by blood or marriage, a person with whom the
2 defendant is in a dating relationship as defined by Section 60.1 of
3 Title 22 of the Oklahoma Statutes, an individual with whom the
4 defendant has had a child, a person who formerly lived in the same
5 household as the defendant, or a person living in the same household
6 as the defendant shall, upon conviction, be guilty of domestic abuse
7 by strangulation and shall be punished by imprisonment in the
8 custody of the Department of Corrections for a period of not less
9 than one (1) year nor more than three (3) years, or by a fine of not
10 more than Three Thousand Dollars (\$3,000.00), or by both such fine
11 and imprisonment. Upon a second or subsequent conviction, the
12 defendant shall be punished by imprisonment in the custody of the
13 Department of Corrections for a period of not less than three (3)
14 years nor more than ten (10) years, or by a fine of not more than
15 Twenty Thousand Dollars (\$20,000.00), or by both such fine and
16 imprisonment. As used in this subsection, "strangulation" means a
17 form of asphyxia characterized by closure of the blood vessels or
18 air passages of the neck as a result of external pressure on the
19 neck.

20 ~~F.~~ J. Any district court of this state and any judge thereof
21 shall be immune from any liability or prosecution for issuing an
22 order that requires a defendant to:

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 suspended or deferred sentence or probation; and

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

8 ~~J.~~ K. There shall be no charge of fees or costs to any victim
9 of domestic violence, stalking, or sexual assault in connection with
10 the prosecution of a domestic violence, stalking, or sexual assault
11 offense in this state.

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

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

1 SECTION 2. This act shall become effective **November 1, 2008**.
2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-2-08 - DO
3 PASS, As Amended.