

SB 2003

Senate Bill No. 2003  
As Amended

SENATE BILL NO. 2003 - By: NICHOLS of the Senate and PETERS of the House.

[ crimes and punishments - domestic abuse - consequences - 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. 2007, 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, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating

1 relationship as defined by Section 60.1 of Title 22 of the Oklahoma  
2 Statutes, an individual with whom the defendant has had a child, a  
3 person who formerly lived in the same household as the defendant, or  
4 a person living in the same household as the defendant shall be  
5 guilty of domestic abuse. Upon conviction, the defendant shall be  
6 punished by imprisonment in the county jail for not more than one  
7 (1) year, or by a fine not exceeding Five Thousand Dollars  
8 (\$5,000.00), or by both such fine and imprisonment. Upon conviction  
9 for a second or subsequent offense, the person shall be punished by  
10 imprisonment in the custody of the Department of Corrections for not  
11 more than four (4) years, or by a fine not exceeding Five Thousand  
12 Dollars (\$5,000.00), or by both such fine and imprisonment. The  
13 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  
16 subsection C of this section that results in great bodily injury to  
17 the victim shall be guilty of a felony and punished by imprisonment  
18 in the custody of the Department of Corrections for not more than  
19 ten (10) years, or by imprisonment in the county jail for not more  
20 than one (1) year. The provisions of Section 51.1 of this title  
21 shall apply to any second or subsequent conviction of a violation of  
22 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

1 in a domestic abuse counseling or treatment program,  
2 the order shall require the defendant to attend the  
3 program for a minimum of fifty-two (52) weeks,  
4 complete the program, and be evaluated before and  
5 after attendance of the program by a program counselor  
6 or a private counselor. Failure to attend four (4)  
7 consecutive sessions of any court ordered domestic  
8 abuse counseling or treatment program shall constitute  
9 sufficient grounds for the district attorney to seek  
10 acceleration or revocation of any probation entered by  
11 the court.

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

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

10 3. a. The court shall set a review hearing no more than one  
11 hundred twenty (120) days after the defendant is  
12 ordered to participate in a domestic abuse counseling  
13 program or undergo treatment for domestic abuse to  
14 assure the attendance and compliance of the defendant  
15 with the provisions of this subsection and the  
16 domestic abuse counseling or treatment requirements.  
17 Failure to attend four (4) consecutive sessions of any  
18 court ordered domestic abuse counseling or treatment  
19 program shall constitute sufficient grounds for the  
20 district attorney to seek acceleration or revocation  
21 of any probation entered by the court.

22 b. The court shall set a second review hearing after the  
23 completion of the counseling or treatment to assure

1 the attendance and compliance of the defendant with  
2 the provisions of this subsection and the domestic  
3 abuse counseling or treatment requirements. The court  
4 shall retain continuing jurisdiction over the  
5 defendant during the course of ordered counseling  
6 through the final review hearing;

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

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

20 6. At the first review hearing, the court shall require the  
21 defendant to appear in court. Thereafter, for any subsequent review  
22 hearings, the court may accept a report on the progress of the  
23 defendant from individual counseling, domestic abuse counseling, or

1 the treatment program. There shall be no requirement for the victim  
2 to attend review hearings; and

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

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

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

19 G. For the purposes of subsections C and E of this section, any  
20 conviction for assault and battery against a current or former  
21 spouse, a present spouse of a former spouse, parents, a foster  
22 parent, a child, a person otherwise related by blood or marriage, a  
23 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

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

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

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

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

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

1 J. There shall be no charge of fees or costs to any victim of  
2 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. In the course of prosecuting any charge of domestic abuse,  
6 stalking, harassment, rape, or violation of a protective order, the  
7 prosecutor shall provide the court, prior to sentencing or any plea  
8 agreement, a local history and any other available history of past  
9 convictions of the defendant within the last ten (10) years relating  
10 to domestic abuse, stalking, harassment, rape, violation of a  
11 protective order, or any other violent misdemeanor or felony  
12 convictions.

13 L. If a person who has not been previously convicted of an  
14 offense under this act or under a statute of the United States or of  
15 any state pleads guilty or nolo contendere to or is found guilty of  
16 a violation of this section, the court may, without entering a  
17 judgment of guilt and with the consent of such person, defer further  
18 proceedings and place him or her on probation upon such reasonable  
19 terms and conditions as it may require including the requirement  
20 that such person cooperate in a treatment and rehabilitation program  
21 of a state-supported or state-approved facility, if available;  
22 provided, the court may use the deferred judgment procedure  
23 described above for any person who has been previously convicted of

1 a crime upon written application of the district attorney. The  
2 written application shall be made a part of the record of the case.  
3 Upon violation of a term or condition, the court may enter an  
4 adjudication of guilt and proceed as otherwise provided. Upon  
5 fulfillment of the terms and conditions of probation, the court  
6 shall discharge such person and dismiss the proceedings against him  
7 or her. Discharge and dismissal under this section shall be without  
8 court adjudication of guilt and shall not be deemed a conviction for  
9 purposes of this section or for purposes of disqualifications or  
10 disabilities imposed by law upon conviction of a crime. Discharge  
11 and dismissal under this section may occur only once with respect to  
12 any person. Any expunged arrest or conviction shall not thereafter  
13 be regarded as an arrest or conviction for purposes of employment,  
14 civil rights, or any statute, regulation, license, questionnaire or  
15 any other public or private purpose; provided, that, any such plea  
16 of guilty or finding of guilt shall constitute a conviction of the  
17 offense for the purpose of this act or any other criminal statute  
18 under which the existence of a prior conviction is relevant.

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-19-08 - DO  
2 PASS, As Amended and Coauthored.