

3 Senate Bill No. 2104

4 SENATE BILL NO. 2104 - By: LEFTWICH of the Senate and PIATT of the
5 House.

6 An Act relating to domestic abuse; amending 21 O.S. 2001,
7 Section 644, as last amended by Section 1, Chapter 284,
8 O.S.L. 2006 (21 O.S. Supp. 2007, Section 644), which relates
9 to assault and battery; allowing suspension of sentencing
10 under certain circumstances; requiring certain proof;
11 amending 22 O.S. 2001, Section 60.6, as last amended by
12 Section 5, Chapter 156, O.S.L. 2007, and Section 6, Chapter
13 466, O.S.L. 2002, as amended by Section 3, Chapter 516,
14 O.S.L. 2004 (22 O.S. Supp. 2007, Sections 60.6 and 60.16),
15 which relate to domestic abuse; allowing suspension of
16 sentencing under certain circumstances; requiring certain
17 proof; removing limitation on certain arrest; and providing
18 an effective date.

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

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

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

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

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

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

1 than one (1) year. The provisions of Section 51.1 of this title
2 shall apply to any second or subsequent conviction of a violation of
3 this subsection.

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

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

22 2. a. The court shall require the defendant to participate
23 in counseling or undergo treatment for domestic abuse

1 by an individual licensed practitioner or a domestic
2 abuse treatment program certified by the Attorney
3 General. If the defendant is ordered to participate
4 in a domestic abuse counseling or treatment program,
5 the order shall require the defendant to attend the
6 program for a minimum of fifty-two (52) weeks,
7 complete the program, and be evaluated before and
8 after attendance of the program by a program counselor
9 or a private counselor.

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

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

- 8 3. a. The court shall set a review hearing no more than one
9 hundred twenty (120) days after the defendant is
10 ordered to participate in a domestic abuse counseling
11 program or undergo treatment for domestic abuse to
12 assure the attendance and compliance of the defendant
13 with the provisions of this subsection and the
14 domestic abuse counseling or treatment requirements.
15 The court may suspend sentencing of the defendant
16 until the defendant has presented proof to the court
17 of enrollment in a program of treatment for domestic
18 abuse by an individual licensed practitioner or a
19 domestic abuse treatment program certified by the
20 Attorney General and attendance at weekly sessions at
21 such program. Such proof shall be presented to the
22 court by the defendant no later than one hundred
23 twenty (120) days after the defendant is ordered to

1 such counseling or treatment. At such time the court
2 may complete sentencing, beginning the period of the
3 sentence from the date that proof of enrollment is
4 presented to the court, and schedule reviews as
5 required by subparagraphs a and b of this paragraph
6 and paragraphs 4 and 5 of this subsection.

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

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

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

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

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

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

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

21 F. As used in subsection E of this section, "in the presence of
22 a child" means in the physical presence of a child; or having
23 knowledge that a child is present and may see or hear an act of

1 domestic violence. For the purposes of subsections C and E of this
2 section, "child" may be any child whether or not related to the
3 victim or the defendant.

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

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

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

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

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

21 I. Any district court of this state and any judge thereof shall
22 be immune from any liability or prosecution for issuing an order
23 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. There shall be no charge of fees or costs to any victim of
9 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. In the course of prosecuting any charge of domestic abuse,
13 stalking, harassment, rape, or violation of a protective order, the
14 prosecutor shall provide the court, prior to sentencing or any plea
15 agreement, a local history and any other available history of past
16 convictions of the defendant within the last ten (10) years relating
17 to domestic abuse, stalking, harassment, rape, violation of a
18 protective order, or any other violent misdemeanor or felony
19 convictions.

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

1 SECTION 2. AMENDATORY 22 O.S. 2001, Section 60.6, as
2 last amended by Section 5, Chapter 156, O.S.L. 2007 (22 O.S. Supp.
3 2007, Section 60.6), is amended to read as follows:

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

6 1. Has been served with an ex parte or final protective order
7 or foreign protective order and is in violation of such protective
8 order, upon conviction, shall be guilty of a misdemeanor and shall
9 be punished by a fine of not more than One Thousand Dollars
10 (\$1,000.00) or by a term of imprisonment in the county jail of not
11 more than one (1) year, or both such fine and imprisonment; and

12 2. After a previous conviction of a violation of a protective
13 order, is convicted of a second or subsequent offense pursuant to
14 the provisions of this section shall, upon conviction, be guilty of
15 a felony and shall be punished by a term of imprisonment in the
16 custody of the Department of Corrections for not less than one (1)
17 year nor more than three (3) years, or by a fine of not less than
18 Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars
19 (\$10,000.00), or by both such fine and imprisonment.

20 B. 1. Any person who has been served with an ex parte or final
21 protective order or foreign protective order who violates the
22 protective order and causes physical injury or physical impairment
23 to the plaintiff or to any other person named in said protective

1 order shall, upon conviction, be guilty of a misdemeanor and shall
2 be punished by a term of imprisonment in the county jail for not
3 less than twenty (20) days nor more than one (1) year. In addition
4 to the term of imprisonment, the person may be punished by a fine
5 not to exceed Five Thousand Dollars (\$5,000.00).

6 2. Any person who is convicted of a second or subsequent
7 violation of a protective order which causes physical injury or
8 physical impairment to a plaintiff or to any other person named in
9 the protective order shall be guilty of a felony and shall be
10 punished by a term of imprisonment in the custody of the Department
11 of Corrections of not less than one (1) year nor more than five (5)
12 years, or by a fine of not less than Three Thousand Dollars
13 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by
14 both such fine and imprisonment.

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

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

21 C. The minimum sentence of imprisonment issued pursuant to the
22 provisions of paragraph 2 of subsection A and paragraph 1 of
23 subsection B of this section shall not be subject to statutory

1 provisions for suspended sentences, deferred sentences or probation,
2 provided the court may subject any remaining penalty under the
3 jurisdiction of the court to the statutory provisions for suspended
4 sentences, deferred sentences or probation.

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

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

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

1 after attendance of the program by a program counselor
2 or a private counselor.

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

1 3. a. The court shall set a review hearing no more than one
2 hundred twenty (120) days after the defendant is
3 ordered to participate in a domestic abuse counseling
4 program or undergo treatment for domestic abuse to
5 assure the attendance and compliance of the defendant
6 with the provisions of this subsection and the
7 domestic abuse counseling or treatment requirements.

8 b. The court shall set a second review hearing after the
9 completion of the counseling or treatment to assure
10 the attendance and compliance of the defendant with
11 the provisions of this subsection and the domestic
12 abuse counseling or treatment requirements. The court
13 may suspend sentencing of the defendant until the
14 defendant has presented proof to the court of
15 enrollment in a program of treatment for domestic
16 abuse by an individual licensed practitioner or a
17 domestic abuse treatment program certified by the
18 Attorney General and attendance at weekly sessions at
19 such program. Such proof shall be presented to the
20 court by the defendant no later than one hundred
21 twenty (120) days after the defendant is ordered to
22 such counseling or treatment. At such time the court
23 may complete sentencing, beginning the period 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 E. Ex parte and final protective orders shall include notice of
13 these penalties.

14 F. When a minor child violates the provisions of any protective
15 order, the violation shall be heard in a juvenile proceeding and the
16 court may order the child and the parent or parents of the child to
17 participate in family counseling services necessary to bring about
18 the cessation of domestic abuse against the victim and may order
19 community service hours to be performed in lieu of any fine or
20 imprisonment authorized by this section.

21 G. Any district court of this state and any judge thereof shall
22 be immune from any liability or prosecution for issuing an order
23 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 final protective order or for any violation of a protective
5 order; and

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

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

13 SECTION 3. AMENDATORY Section 6, Chapter 466, O.S.L.
14 2002, as amended by Section 3, Chapter 516, O.S.L. 2004 (22 O.S.
15 Supp. 2007, Section 60.16), is amended to read as follows:

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

19 B. 1. A peace officer may arrest without a warrant a person
20 anywhere, including a place of residence, if the peace officer has
21 probable cause to believe the person within the preceding seventy-
22 two (72) hours has committed an act of domestic abuse as defined by
23 Section 60.1 of this title, although the assault did not take place

1 in the presence of the peace officer. ~~A peace officer may not~~
2 ~~arrest a person pursuant to this section without first observing a~~
3 ~~recent physical injury to, or an impairment of the physical~~
4 ~~condition of, the alleged victim.~~

5 2. An arrest, when made pursuant to this section, shall be
6 based on an investigation by the peace officer of the circumstances
7 surrounding the incident, past history of violence between the
8 parties, statements of any children present in the residence, and
9 any other relevant factors. A determination by the peace officer
10 shall be made pursuant to the investigation as to which party is the
11 dominant aggressor in the situation. A peace officer may arrest the
12 dominant aggressor.

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

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

22 2. Immediately notify, by telephone or otherwise, a judge of
23 the district court of the request for an emergency temporary order

1 of protection and describe the circumstances. The judge shall
2 inform the peace officer of the decision to approve or disapprove
3 the emergency temporary order;

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

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

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

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JURISPRUDENCE, dated
6 2-20-08 - DO PASS, As Coauthored.