

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2601

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Cox

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6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2001, Section 644, as last amended by Section
1, Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2007,
9 Section 644), which relates to assault and battery
and domestic abuse; providing penalties for domestic
10 abuse against a pregnant woman; and providing an
effective date.
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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

21 D. Any person convicted of domestic abuse committed against a
22 pregnant woman with knowledge of the pregnancy shall be guilty of a
23 felony, punishable by imprisonment in the custody of the Department
24 of Corrections for not less than five (5) years.

1 Any person convicted of a second or subsequent offense of
2 domestic abuse against a pregnant woman with knowledge of the
3 pregnancy shall be guilty of a felony, punishable by imprisonment in
4 the custody of the Department of Corrections for not less than ten
5 (10) years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ~~H.~~ I. Any person who commits any assault and battery with
19 intent to cause great bodily harm by strangulation or attempted
20 strangulation against a current or former spouse, a present spouse
21 of a former spouse, parents, a foster parent, a child, a person
22 otherwise related by blood or marriage, a person with whom the
23 defendant is in a dating relationship as defined by Section 60.1 of
24 Title 22 of the Oklahoma Statutes, an individual with whom the

1 defendant has had a child, a person who formerly lived in the same
2 household as the defendant, or a person living in the same household
3 as the defendant shall, upon conviction, be guilty of domestic abuse
4 by strangulation and shall be punished by imprisonment in the
5 custody of the Department of Corrections for a period of not less
6 than one (1) year nor more than three (3) years, or by a fine of not
7 more than Three Thousand Dollars (\$3,000.00), or by both such fine
8 and imprisonment. Upon a second or subsequent conviction, the
9 defendant shall be punished by imprisonment in the custody of the
10 Department of Corrections for a period of not less than three (3)
11 years nor more than ten (10) years, or by a fine of not more than
12 Twenty Thousand Dollars (\$20,000.00), or by both such fine and
13 imprisonment. As used in this subsection, "strangulation" means a
14 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
16 neck.

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

- 20 1. Attend a treatment program for domestic abusers certified by
21 the Attorney General;
- 22 2. Attend counseling or treatment services ordered as part of
23 any suspended or deferred sentence or probation; and

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

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

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

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

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

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22 51-2-8215 GRS 12/28/07

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