

1 STATE OF OKLAHOMA

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

3 SENATE BILL 2003

By: Nichols

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2001, Section 644, as last amended by Section
9 1, Chapter 284, O.S.L. 2006 (21 O.S. Supp. 2007,
10 Section 644), which relates to domestic abuse;
11 stating consequences for failure to attend certain
12 treatment program; establishing guidelines for
13 certain probation; and providing an effective date.

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
24 than One Thousand Dollars (\$1,000.00), or by both such fine and
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
24 than one (1) year. The provisions of Section 51.1 of this title

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

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

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

21 2. a. The court shall require the defendant to participate
22 in counseling or undergo treatment for domestic abuse
23 by an individual licensed practitioner or a domestic
24 abuse treatment program certified by the Attorney

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

13 b. A program for anger management, couples counseling, or
14 family and marital counseling shall not solely qualify
15 for the counseling or treatment requirement for
16 domestic abuse pursuant to this subsection. The
17 counseling may be ordered in addition to counseling
18 specifically for the treatment of domestic abuse or
19 per evaluation as set forth below. If, after
20 sufficient evaluation and attendance at required
21 counseling sessions, the domestic violence treatment
22 program or licensed professional determines that the
23 defendant does not evaluate as a perpetrator of
24 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
24 the attendance and compliance of the defendant with

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

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

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

19 6. At the first review hearing, the court shall require the
20 defendant to appear in court. Thereafter, for any subsequent review
21 hearings, the court may accept a report on the progress of the
22 defendant from individual counseling, domestic abuse counseling, or
23 the treatment program. There shall be no requirement for the victim
24 to attend review hearings; and

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

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

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

17 G. For the purposes of subsections C and E of this section, any
18 conviction for assault and battery against a current or former
19 spouse, a present spouse of a former spouse, parents, a foster
20 parent, a child, a person otherwise related by blood or marriage, a
21 person with whom the defendant is in a dating relationship as
22 defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an
23 individual with whom the defendant has had a child, a person who
24 formerly lived in the same household as the defendant, or any person

1 living in the same household as the defendant, shall constitute a
2 sufficient basis for a felony charge:

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

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

10 H. Any person who commits any assault and battery with intent
11 to cause great bodily harm by strangulation or attempted
12 strangulation against a current or former spouse, a present spouse
13 of a former spouse, parents, a foster parent, a child, a person
14 otherwise related by blood or marriage, a person with whom the
15 defendant is in a dating relationship as defined by Section 60.1 of
16 Title 22 of the Oklahoma Statutes, an individual with whom the
17 defendant has had a child, a person who formerly lived in the same
18 household as the defendant, or a person living in the same household
19 as the defendant shall, upon conviction, be guilty of domestic abuse
20 by strangulation and shall be punished by imprisonment in the
21 custody of the Department of Corrections for a period of not less
22 than one (1) year nor more than three (3) years, or by a fine of not
23 more than Three Thousand Dollars (\$3,000.00), or by both such fine
24 and imprisonment. Upon a second or subsequent conviction, the

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

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

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

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

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

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

23 K. In the course of prosecuting any charge of domestic abuse,
24 stalking, harassment, rape, or violation of a protective order, the

1 prosecutor shall provide the court, prior to sentencing or any plea
2 agreement, a local history and any other available history of past
3 convictions of the defendant within the last ten (10) years relating
4 to domestic abuse, stalking, harassment, rape, violation of a
5 protective order, or any other violent misdemeanor or felony
6 convictions.

7 L. If a person who has not been previously convicted of an
8 offense under this act or under a statute of the United States or of
9 any state pleads guilty or nolo contendere to or is found guilty of
10 a violation of this section, the court may, without entering a
11 judgment of guilt and with the consent of such person, defer further
12 proceedings and place him or her on probation upon such reasonable
13 terms and conditions as it may require including the requirement
14 that such person cooperate in a treatment and rehabilitation program
15 of a state-supported or state-approved facility, if available;
16 provided, the court may use the deferred judgment procedure
17 described above for any person who has been previously convicted of
18 a crime upon written application of the district attorney. The
19 written application shall be made a part of the record of the case.
20 Upon violation of a term or condition, the court may enter an
21 adjudication of guilt and proceed as otherwise provided. Upon
22 fulfillment of the terms and conditions of probation, the court
23 shall discharge such person and dismiss the proceedings against him
24 or her. Discharge and dismissal under this section shall be without

1 court adjudication of guilt and shall not be deemed a conviction for
2 purposes of this section or for purposes of disqualifications or
3 disabilities imposed by law upon conviction of a crime. Discharge
4 and dismissal under this section may occur only once with respect to
5 any person. Any expunged arrest or conviction shall not thereafter
6 be regarded as an arrest or conviction for purposes of employment,
7 civil rights, or any statute, regulation, license, questionnaire or
8 any other public or private purpose; provided, that, any such plea
9 of guilty or finding of guilt shall constitute a conviction of the
10 offense for the purpose of this act or any other criminal statute
11 under which the existence of a prior conviction is relevant.

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

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

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