

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 2150

By: Sparks of the Senate

3 and

4 Schwartz of the House

5  
6  
7 An Act relating to crimes and punishments; amending  
8 21 O.S. 2001, Section 644, as last amended by Section  
9 1, Chapter 87, O.S.L. 2009 (21 O.S. Supp. 2009,  
10 Section 644), which relates to domestic abuse;  
11 modifying certain offenses; and providing an  
12 effective date.

13 AUTHORS: Remove Schwartz as principal House Author and substitute  
14 Peters and show Schwartz as first Coauthor and add the  
15 following House Coauthor: Ritze

16 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
17 and insert

18 "An Act relating to crimes and punishments; amending  
19 21 O.S. 2001, Section 644, as last amended by  
20 Section 1, Chapter 87, O.S.L. 2009 (21 O.S. Supp.  
21 2009, Section 644), which relates to domestic abuse;  
22 modifying scope of certain offenses; and providing  
23 an effective date.

24 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 87, O.S.L. 2009 (21 O.S. Supp. 2009,  
Section 644), is amended to read as follows:

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

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

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

1 (\$5,000.00), or by both such fine and imprisonment. The provisions  
2 of Section 51.1 of this title shall not apply to any second or  
3 subsequent offense.

4 D. Any person convicted of domestic abuse committed against a  
5 pregnant woman with knowledge of the pregnancy shall be guilty of a  
6 misdemeanor, punishable by imprisonment in the county jail for not  
7 more than one (1) year.

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

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

18 E. Any person convicted of domestic abuse as defined in  
19 subsection C of this section that results in great bodily injury to  
20 the victim shall be guilty of a felony and punished by imprisonment  
21 in the custody of the Department of Corrections for not more than  
22 ten (10) years, or by imprisonment in the county jail for not more  
23 than one (1) year. The provisions of Section 51.1 of this title  
24

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

3 F. 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. Three unexcused absences in  
8 succession or seven unexcused absences in a period of  
9 fifty-two (52) weeks from any court-ordered domestic  
10 abuse counseling or treatment program shall be prima  
11 facie evidence of the violation of the conditions of  
12 probation for the district attorney to seek  
13 acceleration or revocation of any probation entered by  
14 the court.

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

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

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

1 such program. Such proof shall be presented to the  
2 court by the defendant no later than one hundred  
3 twenty (120) days after the defendant is ordered to  
4 such counseling or treatment. At such time, the court  
5 may complete sentencing, beginning the period of the  
6 sentence from the date that proof of enrollment is  
7 presented to the court, and schedule reviews as  
8 required by subparagraphs a and b of this paragraph  
9 and paragraphs 4 and 5 of this subsection. Three  
10 unexcused absences in succession or seven unexcused  
11 absences in a period of fifty-two (52) weeks from any  
12 court-ordered domestic abuse counseling or treatment  
13 program shall be prima facie evidence of the violation  
14 of the conditions of probation for the district  
15 attorney to seek acceleration or revocation of any  
16 probation entered by the court.

- 17 b. The court shall set a second review hearing after the  
18 completion of the counseling or treatment to assure  
19 the attendance and compliance of the defendant with  
20 the provisions of this subsection and the domestic  
21 abuse counseling or treatment requirements. The court  
22 shall retain continuing jurisdiction over the  
23 defendant during the course of ordered counseling  
24 through the final review hearing;

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

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

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

20           7. If funding is available, a referee may be appointed and  
21 assigned by the presiding judge of the district court to hear  
22 designated cases set for review under this subsection. Reasonable  
23 compensation for the referees shall be fixed by the presiding judge.  
24 The referee shall meet the requirements and perform all duties in

1 the same manner and procedure as set forth in Sections 7003-8.6 and  
2 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees  
3 appointed in juvenile proceedings.

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

6 G. As used in subsection F of this section, "in the presence of  
7 a child" means in the physical presence of a child; or having  
8 knowledge that a child is present and may see or hear an act of  
9 domestic violence. For the purposes of subsections C and F of this  
10 section, "child" may be any child whether or not related to the  
11 victim or the defendant.

12 H. For the purposes of subsections C and F of this section, any  
13 conviction for assault and battery against a current or former  
14 spouse, a present spouse of a former spouse, a former spouse of a  
15 present spouse, parents, a foster parent, a child, a person  
16 otherwise related by blood or marriage, a person with whom the  
17 defendant is or was in a dating relationship as defined by Section  
18 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom  
19 the defendant has had a child, a person who formerly lived in the  
20 same household as the defendant, or any person living in the same  
21 household as the defendant, shall constitute a sufficient basis for  
22 a felony charge:

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

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

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

1 (\$20,000.00), or by both such fine and imprisonment. As used in  
2 this subsection, "strangulation" means any form of asphyxia;  
3 including, but not limited to, asphyxia characterized by closure of  
4 the blood vessels or air passages of the neck as a result of  
5 external pressure on the neck or the closure of the nostrils or  
6 mouth as a result of external pressure on the head.

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

10 1. Attend a treatment program for domestic abusers certified by  
11 the Attorney General;

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

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

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

21 L. In the course of prosecuting any charge of domestic abuse,  
22 stalking, harassment, rape, or violation of a protective order, the  
23 prosecutor shall provide the court, prior to sentencing or any plea  
24 agreement, a local history and any other available history of past

1 convictions of the defendant within the last ten (10) years relating  
2 to domestic abuse, stalking, harassment, rape, violation of a  
3 protective order, or any other violent misdemeanor or felony  
4 convictions.

5 M. Any plea of guilty or finding of guilt for a violation of  
6 subsection C, E, F, H or I of this section shall constitute a  
7 conviction of the offense for the purpose of this act or any other  
8 criminal statute under which the existence of a prior conviction is  
9 relevant.

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

14 SECTION 2. This act shall become effective November 1, 2010."

15 Passed the House of Representatives the 13th day of April, 2010.

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Presiding Officer of the House of  
Representatives

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20 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2010.

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Presiding Officer of the Senate

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