

THE HOUSE OF REPRESENTATIVES
Wednesday, March 24, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 2150

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2150 - By:
SPARKS of the Senate and SCHWARTZ of the House.

An Act relating to crimes and punishments; amending 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), which relates to domestic abuse; modifying scope of certain offenses; and providing an effective date.

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

1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 644, as last amended by
2 Section 1, Chapter 87, O.S.L. 2009 (21 O.S. Supp. 2009, Section 644), is amended to read
3 as follows:

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

7 B. Assault and battery shall be punishable by imprisonment in a county jail not
8 exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars
9 (\$1,000.00), or by both such fine and imprisonment.

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

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

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

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

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

11 F. Any person convicted of domestic abuse as defined in subsection C of this section
12 that was committed in the presence of a child shall be punished by imprisonment in the
13 county jail for not less than six (6) months nor more than one (1) year, or by a fine not
14 exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.
15 Any person convicted of a second or subsequent domestic abuse as defined in subsection
16 C of this section that was committed in the presence of a child shall be punished by
17 imprisonment in the custody of the Department of Corrections for not less than one (1)
18 year nor more than five (5) years, or by a fine not exceeding Seven Thousand Dollars
19 (\$7,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this
20 title shall not apply to any second or subsequent offense. For every conviction of
21 domestic abuse, the court shall:

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

4 2. a. The court shall require the defendant to participate in counseling or
5 undergo treatment for domestic abuse by an individual licensed
6 practitioner or a domestic abuse treatment program certified by the
7 Attorney General. If the defendant is ordered to participate in a
8 domestic abuse counseling or treatment program, the order shall
9 require the defendant to attend the program for a minimum of fifty-
10 two (52) weeks, complete the program, and be evaluated before and
11 after attendance of the program by a program counselor or a private
12 counselor. Three unexcused absences in succession or seven unexcused
13 absences in a period of fifty-two (52) weeks from any court-ordered
14 domestic abuse counseling or treatment program shall be prima facie
15 evidence of the violation of the conditions of probation for the district
16 attorney to seek acceleration or revocation of any probation entered by
17 the court.

18 b. A program for anger management, couples counseling, or family and
19 marital counseling shall not solely qualify for the counseling or
20 treatment requirement for domestic abuse pursuant to this subsection.
21 The counseling may be ordered in addition to counseling specifically for
22 the treatment of domestic abuse or per evaluation as set forth below.

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

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

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

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

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

21 5. At any review hearing, if the defendant is not satisfactorily attending individual
22 counseling or a domestic abuse counseling or treatment program or is not in compliance

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

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

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

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

19 G. As used in subsection F of this section, “in the presence of a child” means in the
20 physical presence of a child; or having knowledge that a child is present and may see or
21 hear an act of domestic violence. For the purposes of subsections C and F of this section,
22 “child” may be any child whether or not related to the victim or the defendant.

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

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

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

15 I. Any person who commits any assault and battery with intent to cause great
16 bodily harm by strangulation or attempted strangulation against a current or former
17 spouse, a present spouse of a former spouse, a former spouse of a present spouse,
18 parents, a foster parent, a child, a person otherwise related by blood or marriage, a
19 person with whom the defendant is or was in a dating relationship as defined by Section
20 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has
21 had a child, a person who formerly lived in the same household as the defendant, or a
22 person living in the same household as the defendant shall, upon conviction, be guilty of

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

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

- 14 1. Attend a treatment program for domestic abusers certified by the Attorney
15 General;
- 16 2. Attend counseling or treatment services ordered as part of any suspended or
17 deferred sentence or probation; and
- 18 3. Attend, complete, and be evaluated before and after attendance by a treatment
19 program for domestic abusers, certified by the Attorney General.

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

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

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-23-10 - DO PASS,
15 As Amended.