

THE HOUSE OF REPRESENTATIVES
Wednesday, February 25, 2009

House Bill No. 2168

HOUSE BILL NO. 2168 - By: MCCULLOUGH of the House.

An Act relating to crimes and punishment; amending 21 O.S. 2001, Section 644, as last amended by Section 1, Chapter 318, O.S.L. 2008 (21 O.S. Supp. 2008, Section 644), which relates to assault and battery and domestic violence; providing time limitations for use of prior conviction records; amending 22 O.S. 2001, Section 991c, as last amended by Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2008, Section 991c), which relates to deferred sentences; increasing amount of years that courts may defer sentencing proceedings; modifying language; 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 318, O.S.L. 2008 (21 O.S. Supp. 2008, Section 644), is amended to
- 3 read 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.
- 10 C. Any person who commits any assault and battery against a current or former
- 11 spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person

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

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

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

20 Any person convicted of domestic abuse committed against a pregnant woman with
21 knowledge of the pregnancy and a miscarriage occurs or injury to the unborn child occurs

1 shall be guilty of a felony, punishable by imprisonment in the custody of the Department
2 of Corrections for not less than twenty (20) years.

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

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

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

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

8 3. a. The court shall set a review hearing no more than one hundred twenty (120)
9 days after the defendant is ordered to participate in a domestic abuse
10 counseling program or undergo treatment for domestic abuse to assure
11 the attendance and compliance of the defendant with the provisions of
12 this subsection and the domestic abuse counseling or treatment
13 requirements. Three unexcused absences in succession or seven
14 unexcused absences in a period of fifty-two (52) weeks from any court-
15 ordered domestic abuse counseling or treatment program shall be
16 prima facie evidence of the violation of the conditions of probation for
17 the district attorney to seek acceleration or revocation of any probation
18 entered by the court.

19 b. The court shall set a second review hearing after the completion of the
20 counseling or treatment to assure the attendance and compliance of
21 the defendant with the provisions of this subsection and the domestic
22 abuse counseling or treatment requirements. The court shall retain

1 continuing jurisdiction over the defendant during the course of ordered
2 counseling through the final review hearing;

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

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

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

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

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

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

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

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

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

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

1 I. Any person who commits any assault and battery with intent to cause great
2 bodily harm by strangulation or attempted strangulation against a current or former
3 spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person
4 otherwise related by 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 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 a person living in the same household as the
8 defendant shall, upon conviction, be guilty of domestic abuse by strangulation and shall
9 be punished by imprisonment in the custody of the Department of Corrections for a
10 period of not less than one (1) year nor more than three (3) years, or by a fine of not more
11 than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. Upon
12 a second or subsequent conviction, the defendant shall be punished by imprisonment in
13 the custody of the Department of Corrections for a period of not less than three (3) years
14 nor more than ten (10) years, or by a fine of not more than Twenty Thousand Dollars
15 (\$20,000.00), or by both such fine and imprisonment. As used in this subsection,
16 “strangulation” means a form of asphyxia characterized by closure of the blood vessels or
17 air passages of the neck as a result of external pressure on the neck.

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

20 1. Attend a treatment program for domestic abusers certified by the Attorney
21 General;

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

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

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

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

14 M. Any plea of guilty or finding of guilt for a violation of subsection C, E, F, H or I
15 of this section shall constitute a conviction of the offense for the purpose of this act or any
16 other criminal statute under which the existence of a prior conviction is relevant for a
17 period of ten (10) years following the completion of any court imposed probationary term;
18 provided, the person has not, in the meantime, been convicted of a misdemeanor
19 involving moral turpitude or a felony.

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

1 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991c, as last amended by
2 Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp. 2008, Section 991c), is amended to
3 read as follows:

4 Section 991c. A. Upon a verdict or plea of guilty or upon a plea of nolo contendere,
5 but before a judgment of guilt, the court may, without entering a judgment of guilt and
6 with the consent of the defendant, defer further proceedings upon the specific conditions
7 prescribed by the court not to exceed a ~~five-year~~ ten-year period. The court shall first
8 consider restitution among the various conditions it may prescribe. The court may also
9 consider ordering the defendant to:

- 10 1. Pay court costs;
- 11 2. Pay an assessment in lieu of any fine authorized by law for the offense;
- 12 3. Pay any other assessment or cost authorized by law;
- 13 4. Engage in a term of community service without compensation, according to a
14 schedule consistent with the employment and family responsibilities of the defendant;
- 15 5. County jail confinement for a period not to exceed ninety (90) days or the
16 maximum amount of jail time provided for the offense, if it is less than ninety (90) days;
- 17 6. Pay an amount as reimbursement for reasonable attorney fees, to be paid into
18 the court fund, if a court-appointed attorney has been provided to defendant;
- 19 7. Be supervised in the community for a period not to exceed two (2) years. As a
20 condition of any supervision, the defendant shall be required to pay a supervision fee of
21 Forty Dollars (\$40.00) per month. The supervision fee shall be waived in whole or part

1 by the supervisory agency when the accused is indigent. No person shall be denied
2 supervision based solely on the ~~person's~~ inability of the person to pay a fee;

3 8. Pay into the court fund a monthly amount not exceeding Forty Dollars (\$40.00)
4 per month during any period during which the proceedings are deferred when the
5 defendant is not to be supervised in the community. The total amount to be paid into the
6 court fund shall be established by the court and shall not exceed the amount of the
7 maximum fine authorized by law for the offense;

8 9. Make other reparations to the community or victim as required and deemed
9 appropriate by the court;

10 10. Order any conditions which can be imposed for a suspended sentence pursuant
11 to paragraph 1 of subsection A of Section 991a of this title; or

12 11. Any combination of the above provisions.

13 B. In addition to any conditions of supervision provided for in subsection A of this
14 section, the court shall, in the case of a person before the court for the offense of
15 operating or being in control of a motor vehicle while the person was under the influence
16 of alcohol, other intoxicating substance, or a combination of alcohol and another
17 intoxicating substance, or who is before the court for the offense of operating a motor
18 vehicle while the ability of the person to operate such vehicle was impaired due to the
19 consumption of alcohol, require the person to participate in an alcohol and drug
20 substance abuse evaluation program offered by a facility or qualified practitioner
21 certified by the Department of Mental Health and Substance Abuse Services for the
22 purpose of evaluating the receptivity to treatment and prognosis of the person. The court

1 shall order the person to reimburse the facility or qualified practitioner for the
2 evaluation. The Department of Mental Health and Substance Abuse Services shall
3 establish a fee schedule, based upon ~~a person's~~ the ability of a person to pay, provided the
4 fee for an evaluation shall not exceed Seventy-five Dollars (\$75.00). The evaluation shall
5 be conducted at a certified facility, the office of a qualified practitioner or at another
6 location as ordered by the court. The facility or qualified practitioner shall, within
7 seventy-two (72) hours from the time the person is assessed, submit a written report to
8 the court for the purpose of assisting the court in its determination of conditions for
9 deferred sentence. No person, agency or facility operating an alcohol and drug substance
10 abuse evaluation program certified by the Department of Mental Health and Substance
11 Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for
12 any treatment program or alcohol and drug substance abuse service in which the person,
13 agency or facility has a vested interest; however, this provision shall not be construed to
14 prohibit the court from ordering participation in or any person from voluntarily utilizing
15 a treatment program or alcohol and drug substance abuse service offered by such person,
16 agency or facility. Any evaluation report submitted to the court pursuant to this
17 subsection shall be handled in a manner which will keep the report confidential from ~~the~~
18 ~~general public's~~ review by the general public. Nothing contained in this subsection shall
19 be construed to prohibit the court from ordering judgment and sentence in the event the
20 defendant fails or refuses to comply with an order of the court to obtain the evaluation
21 required by this subsection. As used in this subsection, "qualified practitioner" means a
22 person with at least a bachelor's degree in substance abuse treatment, mental health or a

1 related health care field and at least two (2) ~~years'~~ years of experience in providing
2 alcohol abuse treatment, other drug abuse treatment, or both alcohol and other drug
3 abuse treatment who is certified each year by the Department of Mental Health and
4 Substance Abuse Services to provide these assessments. However, any person who does
5 not meet the requirements for a qualified practitioner as defined herein, but who has
6 been previously certified by the Department of Mental Health and Substance Abuse
7 Services to provide alcohol or drug treatment or assessments, shall be considered a
8 qualified practitioner provided all education, experience and certification requirements
9 stated herein are met by September 1, 1995. The court may also require the person to
10 participate in one or both of the following:

11 1. An alcohol and drug substance abuse course, pursuant to Sections 3-452 and 3-
12 453 of Title 43A of the Oklahoma Statutes; and

13 2. A victims impact panel program, if such a program is offered in the county where
14 the judgment is rendered. The defendant shall be required to pay a fee, not less than
15 Five Dollars (\$5.00) nor more than Fifteen Dollars (\$15.00) as set by the governing
16 authority of the program and approved by the court, to the victims impact panel program
17 to offset the cost of participation by the defendant, if in the opinion of the court the
18 defendant has the ability to pay such fee.

19 C. Upon completion of the conditions of the deferred judgment, and upon a finding
20 by the court that the conditions have been met and all fines, fees, and monetary
21 assessments have been paid as ordered, the defendant shall be discharged without a
22 court judgment of guilt, and the court shall order the verdict or plea of guilty or plea of

1 nolo contendere to be expunged from the record and the charge shall be dismissed with
2 prejudice to any further action. The procedure to expunge the ~~defendant's~~ record of the
3 defendant shall be as follows:

4 1. All references to the ~~defendant's~~ name of the defendant shall be deleted from the
5 docket sheet;

6 2. The public index of the filing of the charge shall be expunged by deletion, mark-
7 out or obliteration;

8 3. Upon expungement, the court clerk shall keep a separate confidential index of
9 case numbers and names of defendants which have been obliterated pursuant to the
10 provisions of this section;

11 4. No information concerning the confidential file shall be revealed or released,
12 except upon written order of a judge of the district court or upon written request by the
13 named defendant to the court clerk for the purpose of updating the ~~defendant's~~ criminal
14 history record of the defendant with the Oklahoma State Bureau of Investigation; and

15 5. Defendants qualifying under Section 18 of this title may petition the court to
16 have the filing of the indictment and the dismissal expunged from the public index and
17 docket sheet. This section shall not be mutually exclusive of Section 18 of this title.

18 D. Upon order of the court, the provisions of subsection C of this section shall be
19 retroactive.

20 E. Upon violation of any condition of the deferred judgment, the court may enter a
21 judgment of guilt and proceed as provided in Section 991a of this title or may modify any
22 condition imposed. Provided, however, if the deferred judgment is for a felony offense,

1 and the defendant commits another felony offense, the defendant shall not be allowed
2 bail pending appeal.

3 F. The deferred judgment procedure described in this section shall apply only to
4 defendants who have not been previously convicted of a felony offense and have not
5 received a deferred judgment for a felony offense within the ten (10) years previous to the
6 commission of the pending offense.

7 Provided, the court may waive this prohibition upon written application of the
8 district attorney. Both the application and the waiver shall be made a part of the record
9 of the case.

10 G. The deferred judgment procedure described in this section shall not apply to
11 defendants found guilty or who plead guilty or nolo contendere to a sex offense required
12 by law to register pursuant to the Sex Offenders Registration Act.

13 H. Defendants who are supervised by the Department of Corrections pursuant to
14 this section shall be subject to the intermediate sanction process as established in
15 subsection B of Section 991b of this title.

16 SECTION 3. This act shall become effective November 1, 2009.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-24-09 - DO PASS.