

EHB 1892

THE STATE SENATE
Monday, April 6, 2009

ENGROSSED

House Bill No. 1892

As Amended

ENGROSSED HOUSE BILL NO. 1892 - By: Peterson and Kern of the House and Coffee of the Senate.

[domestic violence - assault and battery - domestic abuse - effective date]

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 403, O.S.L. 2008 (21 O.S. Supp. 2008, Section 644), is amended to read as follows:

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

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

C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by

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

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

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

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

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

1 in a domestic abuse counseling or treatment program,
2 the order shall require the defendant to attend the
3 program for a minimum of fifty-two (52) weeks,
4 complete the program, and be evaluated before and
5 after attendance of the program by a program counselor
6 or a private counselor.

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

1 manage anger, the defendant shall be ordered to
2 complete the counseling as per the recommendations of
3 the domestic violence treatment program or licensed
4 professional;

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

1 presented to the court, and schedule reviews as
2 required by subparagraphs a and b of this paragraph
3 and paragraphs 4 and 5 of this subsection.

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

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

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

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. As used in subsection E of this section, "in the presence of
20 a child" means in the physical presence of a child; or having
21 knowledge that a child is present and may see or hear an act of
22 domestic violence. For the purposes of subsections C and E of this

1 section, "child" may be any child whether or not related to the
2 victim or the defendant.

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

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

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

20 H. Any person who commits any assault and battery with intent
21 to cause great bodily harm by strangulation or attempted
22 strangulation against a current or former spouse, a present spouse
23 of a former spouse, parents, a foster parent, a child, a person

1 otherwise related by blood or marriage, a person with whom the
2 defendant is in a dating relationship as defined by Section 60.1 of
3 Title 22 of the Oklahoma Statutes, an individual with whom the
4 defendant has had a child, a person who formerly lived in the same
5 household as the defendant, or a person living in the same household
6 as the defendant shall, upon conviction, be guilty of domestic abuse
7 by strangulation and shall be punished by imprisonment in the
8 custody of the Department of Corrections for a period of not less
9 than one (1) year nor more than three (3) years, or by a fine of not
10 more than Three Thousand Dollars (\$3,000.00), or by both such fine
11 and imprisonment. Upon a second or subsequent conviction, the
12 defendant shall be punished by imprisonment in the custody of the
13 Department of Corrections for a period of not less than three (3)
14 years nor more than ten (10) years, or by a fine of not more than
15 Twenty Thousand Dollars (\$20,000.00), or by both such fine and
16 imprisonment. As used in this subsection, "strangulation" means a
17 any form of asphyxia; including, but not limited to, asphyxia
18 characterized by closure of the blood vessels or air passages of the
19 neck as a result of external pressure on the neck or the closure of
20 the nostrils or mouth as a result of external pressure on the head.

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

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

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

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

8 J. There shall be no charge of fees or costs to any victim of
9 domestic violence, stalking, or sexual assault in connection with
10 the prosecution of a domestic violence, stalking, or sexual assault
11 offense in this state.

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

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

1 SECTION 2. This act shall become effective November 1, 2009.
2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-31-09 - DO
3 PASS, As Amended.