

SB 2150

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THE STATE SENATE  
Monday, February 22, 2010

Senate Bill No. 2150

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 certain offenses; and providing an 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 87, O.S.L. 2009 (21 O.S. Supp. 2009, 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, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person

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

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

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

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

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

14 F. Any person convicted of domestic abuse as defined in  
15 subsection C of this section that was committed in the presence of a  
16 child shall be punished by imprisonment in the county jail for not  
17 less than six (6) months nor more than one (1) year, or by a fine  
18 not exceeding Five Thousand Dollars (\$5,000.00), or by both such  
19 fine and imprisonment. Any person convicted of a second or  
20 subsequent domestic abuse as defined in subsection C of this section  
21 that was committed in the presence of a child shall be punished by  
22 imprisonment in the custody of the Department of Corrections for not  
23 less than one (1) year nor more than five (5) years, or by a fine

1 not exceeding Seven Thousand Dollars (\$7,000.00), or by both such  
2 fine and imprisonment. The provisions of Section 51.1 of this title  
3 shall not apply to any second or subsequent offense. For every  
4 conviction of domestic abuse, the court shall:

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

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

1                   probation for the district attorney to seek  
2                   acceleration or revocation of any probation entered by  
3                   the court.

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

1 the domestic violence treatment program or licensed  
2 professional;

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

1 and paragraphs 4 and 5 of this subsection. Three  
2 unexcused absences in succession or seven unexcused  
3 absences in a period of fifty-two (52) weeks from any  
4 court-ordered domestic abuse counseling or treatment  
5 program shall be prima facie evidence of the violation  
6 of the conditions of probation for the district  
7 attorney to seek acceleration or revocation of any  
8 probation entered by the court.

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

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

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

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

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

13 7. If funding is available, a referee may be appointed and  
14 assigned by the presiding judge of the district court to hear  
15 designated cases set for review under this subsection. Reasonable  
16 compensation for the referees shall be fixed by the presiding judge.  
17 The referee shall meet the requirements and perform all duties in  
18 the same manner and procedure as set forth in Sections 7003-8.6 and  
19 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees  
20 appointed in juvenile proceedings.

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

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

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

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

20 2. If that conviction is rendered in any municipal court of  
21 record of this or any other state for which any jail time was  
22 served; provided, no conviction in a municipal court of record

1 entered prior to November 1, 1997, shall constitute a prior  
2 conviction for purposes of a felony charge.

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

1 including, but not limited to, asphyxia characterized by closure of  
2 the blood vessels or air passages of the neck as a result of  
3 external pressure on the neck or the closure of the nostrils or  
4 mouth as a result of external pressure on the head.

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

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

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

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

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

19 L. In the course of prosecuting any charge of domestic abuse,  
20 stalking, harassment, rape, or violation of a protective order, the  
21 prosecutor shall provide the court, prior to sentencing or any plea  
22 agreement, a local history and any other available history of past  
23 convictions of the defendant within the last ten (10) years relating

1 to domestic abuse, stalking, harassment, rape, violation of a  
2 protective order, or any other violent misdemeanor or felony  
3 convictions.

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

9 N. For purposes of subsection E of this section, "great bodily  
10 injury" means bone fracture, protracted and obvious disfigurement,  
11 protracted loss or impairment of the function of a body part, organ  
12 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 PUBLIC SAFETY & HOMELAND SECURITY,  
15 dated 2-16-10 - DO PASS, As Coauthored.