

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1892

By: Peterson

4
5
6 AS INTRODUCED

7 An Act relating to domestic violence; amending 21
8 O.S. 2001, Section 644, as last amended by Section 1,
9 Chapter 403, O.S.L. 2008 (21 O.S. Supp. 2008, Section
10 644), which relates to assault and battery and
11 domestic abuse; making certain acts unlawful;
12 providing penalty; amending 22 O.S. 2001, Section
13 1105, as last amended by Section 1, Chapter 128,
14 O.S.L. 2005 (22 O.S. Supp. 2008, Section 1105), which
15 relates to the release of defendants upon giving
16 bail; prohibiting release of persons arrested for
17 certain crime; amending Section 3, Chapter 125,
18 O.S.L. 2002, as amended by Section 3, Chapter 114,
19 O.S.L. 2008 (22 O.S. Supp. 2008, Section 1105.3),
20 which relates to the Pretrial Release Act; making
21 certain offense ineligible for pretrial release; and
22 providing an effective date.

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

24 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.

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

5 C. Any person who commits any assault and battery against a
6 current or former spouse, a present spouse of a former spouse,
7 parents, a foster parent, a child, a person otherwise related by
8 blood or 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 be
13 guilty of domestic abuse. Upon conviction, the defendant shall be
14 punished by imprisonment in the county jail for not more than one
15 (1) year, or by a fine not exceeding Five Thousand Dollars
16 (\$5,000.00), or by both such fine and imprisonment. Upon conviction
17 for a second or subsequent offense, the person shall be punished by
18 imprisonment in the custody of the Department of Corrections for not
19 more than four (4) years, or by a fine not exceeding Five Thousand
20 Dollars (\$5,000.00), or by both such fine and imprisonment. The
21 provisions of Section 51.1 of this title shall not apply to any
22 second or subsequent offense.

23 D. Any person who, with intent to do bodily harm and without
24 justifiable or excusable cause, commits any assault, battery, or

1 assault and battery upon a current or former spouse, a present
2 spouse of a former spouse, parents, a foster parent, a child, a
3 person otherwise related by blood or marriage, a person with whom
4 the defendant is in a dating relationship as defined by Section 60.1
5 of Title 22 of the Oklahoma Statutes, an individual with whom the
6 defendant has had a child, a person who formerly lived in the same
7 household as the defendant, or a person living in the same household
8 as the defendant with any sharp or dangerous weapon, or who without
9 such cause shoots at another, with any kind of firearm, air gun,
10 conductive energy weapon or other means whatever, with intent to
11 injure any person, although without the intent to kill such person
12 or to commit any felony, upon conviction is guilty of domestic
13 assault or domestic assault and battery with a dangerous weapon.
14 Upon conviction, the defendant shall be punished by imprisonment in
15 the custody of the Department of Corrections for not more than ten
16 (10) years, or by imprisonment in the county jail for not more than
17 one (1) year. The provisions of Section 51.1 of this title shall
18 apply to any second or subsequent conviction of a violation of this
19 subsection.

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

1 than one (1) year. The provisions of Section 51.1 of this title
2 shall apply to any second or subsequent conviction of a violation of
3 this subsection.

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

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

23 2. a. The court shall require the defendant to participate
24 in counseling or undergo treatment for domestic abuse

1 by an individual licensed practitioner or a domestic
2 abuse treatment program certified by the Attorney
3 General. If the defendant is ordered to participate
4 in a domestic abuse counseling or treatment program,
5 the order shall require the defendant to attend the
6 program for a minimum of fifty-two (52) weeks,
7 complete the program, and be evaluated before and
8 after attendance of the program by a program counselor
9 or a private counselor.

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

1 programs related to the mental health, apparent
2 substance or alcohol abuse or inability or refusal to
3 manage anger, the defendant shall be ordered to
4 complete the counseling as per the recommendations of
5 the domestic violence treatment program or licensed
6 professional;

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

1 sentence from the date that proof of enrollment is
2 presented to the court, and schedule reviews as
3 required by subparagraphs a and b of this paragraph
4 and paragraphs 4 and 5 of this subsection.

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

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

17 5. At any review hearing, if the defendant is not
18 satisfactorily attending individual counseling or a domestic abuse
19 counseling or treatment program or is not in compliance with any
20 domestic abuse counseling or treatment requirements, the court may
21 order the defendant to further or continue counseling, treatment, or
22 other necessary services. The court may revoke all or any part of a
23 suspended sentence, deferred sentence, or probation pursuant to
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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.~~ G. As used in subsection ~~E~~ F of this section, "in the
20 presence of a child" means in the physical presence of a child; or
21 having knowledge that a child is present and may see or hear an act
22 of domestic violence. For the purposes of subsections C and ~~E~~ F of
23 this section, "child" may be any child whether or not related to the
24 victim or the defendant.

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

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

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

18 ~~H.~~ I. Any person who commits any assault and battery with
19 intent to cause great bodily harm by strangulation or attempted
20 strangulation against a current or former spouse, a present spouse
21 of a former spouse, parents, a foster parent, a child, a person
22 otherwise related by blood or marriage, a person with whom the
23 defendant is in a dating relationship as defined by Section 60.1 of
24 Title 22 of the Oklahoma Statutes, an individual with whom the

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

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

- 21 1. Attend a treatment program for domestic abusers certified by
22 the Attorney General;
- 23 2. Attend counseling or treatment services ordered as part of
24 any suspended or deferred sentence or probation; and

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

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

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

16 ~~L.~~ M. For purposes of subsection ~~D~~ E of this section, "great
17 bodily injury" means bone fracture, protracted and obvious
18 disfigurement, protracted loss or impairment of the function of a
19 body part, organ or mental faculty, or substantial risk of death.

20 SECTION 2. AMENDATORY 22 O.S. 2001, Section 1105, as
21 last amended by Section 1, Chapter 128, O.S.L. 2005 (22 O.S. Supp.
22 2008, Section 1105), is amended to read as follows:

23 Section 1105. A. Except as otherwise provided by this section,
24 upon the allowance of bail and the execution of the requisite

1 recognizance, bond, or undertaking to the state, the magistrate,
2 judge, or court, shall, if the defendant is in custody, make and
3 sign an order for discharge. The court, in its discretion, may
4 prescribe by court rule the conditions under which the court clerk
5 or deputy court clerk, or the sheriff or deputy sheriff, may prepare
6 and execute an order of release on behalf of the court.

7 B. No police officer or sheriff may release a person arrested
8 for a violation of an ex parte or final protective order as provided
9 in Sections 60.2 and 60.3 of this title, or arrested for an act
10 constituting domestic abuse, domestic assault or domestic assault
11 and battery with a dangerous weapon as specified in Section 644 of
12 Title 21 of the Oklahoma Statutes, or arrested for any act
13 constituting domestic abuse, stalking or harassment as defined by
14 Section 60.1 of this title without the violator appearing before a
15 magistrate, judge or court. The magistrate, judge or court shall
16 determine bond and other conditions of release as necessary for the
17 protection of the alleged victim.

18 C. No police officer or sheriff may release a person arrested
19 for any violation of subsection G of Section 2-401 of Title 63 of
20 the Oklahoma Statutes, without the violator appearing before a
21 magistrate, judge, or court. In determining bond and other
22 conditions of release, the magistrate, judge, or court shall
23 consider any evidence that the person is in any manner dependent
24 upon a controlled dangerous substance or has a pattern of regular,

1 illegal use of any controlled dangerous substance. A rebuttable
2 presumption that no conditions of release on bond would assure the
3 safety of the community or any person therein shall arise if the
4 state shows by clear and convincing evidence:

5 1. The person was arrested for a violation of subsection G of
6 Section 2-401 of Title 63 of the Oklahoma Statutes, relating to
7 manufacturing or attempting to manufacture a controlled dangerous
8 substance, or possessing any of the substances listed in subsection
9 G of Section 2-401 of Title 63 of the Oklahoma Statutes with the
10 intent to manufacture a controlled dangerous substance; and

11 2. The person is in any manner dependent upon a controlled
12 dangerous substance or has a pattern of regular illegal use of a
13 controlled dangerous substance, and the violation referred to in
14 paragraph 1 of this subsection was committed or attempted in order
15 to maintain or facilitate the dependence or pattern of illegal use
16 in any manner.

17 SECTION 3. AMENDATORY Section 3, Chapter 125, O.S.L.
18 2002, as amended by Section 3, Chapter 114, O.S.L. 2008 (22 O.S.
19 Supp. 2008, Section 1105.3), is amended to read as follows:

20 Section 1105.3 A. Any eligible county pursuant to the
21 provisions of this act may establish and fund a pretrial program to
22 be utilized by the district court in that jurisdiction.

23 B. When a pretrial release program is established pursuant to
24 this act and private bail has not been furnished, the judge may

1 order a person to be evaluated through the pretrial program. After
2 conducting an evaluation of the person applying for pretrial
3 release, the pretrial program shall make a recommendation to the
4 court. The recommendation shall indicate any special supervisory
5 conditions for pretrial release. The judge shall consider the
6 recommendations and may grant or deny pretrial release. The
7 presiding judge of the judicial district may issue a standing order
8 outlining criteria for cases that may automatically be evaluated for
9 pretrial release by a pretrial program operating in the
10 jurisdiction. The standing order may include amounts for bail and
11 types of bonds deemed appropriate for certain offenses.

12 C. Except as otherwise authorized by the provisions of this
13 subsection, persons accused of or detained for any of the following
14 offenses or conditions shall not be eligible for pretrial release by
15 any pretrial program:

16 1. Aggravated driving under the influence of an intoxicating
17 substance;

18 2. Any felony driving under the influence of an intoxicating
19 substance;

20 3. Any offense prohibited by the Trafficking In Illegal Drugs
21 Act;

22 4. Any person having a violent felony conviction within the
23 past ten (10) years;

24 5. Appeal bond;

- 1 6. Arson in the first degree, including attempts to commit
- 2 arson in the first degree;
- 3 7. Assault and battery on a police officer;
- 4 8. Bail jumping;
- 5 9. Bribery of a public official;
- 6 10. Burglary in the first or second degree;
- 7 11. Civil contempt proceedings;
- 8 12. Distribution of a controlled dangerous substance, including
- 9 the sale or possession of a controlled dangerous substance with
- 10 intent to distribute or conspiracy to distribute;
- 11 13. Domestic abuse ~~or~~, domestic assault and battery, domestic
- 12 assault or domestic assault and battery with a dangerous weapon;
- 13 14. Driving under the influence of intoxicating substance where
- 14 property damage or personal injury occurs;
- 15 15. Felony discharging a firearm from a vehicle;
- 16 16. Felony sex offenses;
- 17 17. Fugitive bond or a governor's fugitive warrant;
- 18 18. Immigration charges;
- 19 19. Kidnapping;
- 20 20. Juvenile or youthful offender detention;
- 21 21. Manslaughter;
- 22 22. Manufacture of a controlled dangerous substance;
- 23 23. Murder in the first degree, including attempts or
- 24 conspiracy to commit murder in the first degree;

- 1 24. Murder in the second degree, including attempts or
- 2 conspiracy to commit murder in the second degree;
- 3 25. Negligent homicide;
- 4 26. Out-of-county holds;
- 5 27. Persons currently on pretrial release who are arrested on a
- 6 new felony offense;
- 7 28. Possession, manufacture, use, sale or delivery of an
- 8 explosive device;
- 9 29. Possession of a controlled dangerous substance on Schedule
- 10 I or II of the Controlled Dangerous Substances Act;
- 11 30. Possession of a firearm or other offensive weapon during
- 12 the commission of a felony;
- 13 31. Possession of a stolen vehicle;
- 14 32. Rape in the first degree, including attempts to commit rape
- 15 in the first degree;
- 16 33. Rape in the second degree, including attempts to commit
- 17 rape in the second degree;
- 18 34. Robbery by force or fear;
- 19 35. Robbery with a firearm or dangerous weapon, including
- 20 attempts to commit robbery with a firearm or dangerous weapon;
- 21 36. Sexual assault or violent offenses against children;
- 22 37. Shooting with intent to kill;
- 23 38. Stalking or violation of a Victim Protection Order;
- 24 39. Two or more prior felony convictions; or

1 40. Unauthorized use of a motor vehicle.

2 D. A person not eligible for pretrial release pursuant to the
3 provisions of subsection C of this section may be released upon
4 order of a district judge or associate district judge under
5 conditions prescribed by the judge, which may include an order to
6 require the defendant to use an active, real-time, twenty-four-hour
7 Global Positioning System (GPS) monitoring device as a condition of
8 pretrial release. The court may further order the defendant to pay
9 costs and expenses related to the GPS device and monitoring.

10 E. Every pretrial services program operating pursuant to the
11 provisions of this act shall meet the following minimum criteria:

12 1. The program shall establish a procedure for screening and
13 evaluating persons who are detained or have been arrested for the
14 alleged commission of a crime. The program shall obtain criminal
15 history records on detained persons through the National Crime
16 Information Center (NCIC). The information obtained from the
17 screening and evaluation process must be submitted in a written
18 report without unnecessary delay to the judge who is assigned to
19 hear pretrial release applications when the person is eligible for
20 pretrial release;

21 2. The program shall provide reliable information to the judge
22 relating to the person applying for pretrial release so a reasonable
23 decision can be made concerning the amount and type of bail
24 appropriate for pretrial release. The information provided shall be

1 based upon facts relating to the person's risk of danger to the
2 community and the risk of failure to appear for court; and

3 3. The program shall make all reasonable attempts to provide
4 the court with information appropriate to each person considered for
5 pretrial release.

6 F. A pretrial program established pursuant to this act may
7 provide different methods and levels of community-based supervision
8 to meet any court-ordered conditions of release. The program may
9 use existing supervision methods for persons who are released prior
10 to trial. Pretrial programs which employ peace officers certified
11 by the Council on Law Enforcement Education and Training (CLEET) are
12 authorized to enforce court-ordered conditions of release.

13 G. Each pretrial program established pursuant to this act shall
14 provide a quarterly report to the presiding judge of the judicial
15 district of the jurisdiction in which it operates. A copy of the
16 report shall be filed of record with the court clerk of the
17 jurisdiction. Each report shall include, but is not limited to, the
18 following information:

19 1. The total number of persons screened, evaluated or otherwise
20 considered for pretrial release;

21 2. The total number and nature of recommendations made;

22 3. The number of persons admitted to pretrial release that
23 failed to appear; and

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1 4. Any other information deemed appropriate by the reporting
2 judicial district or that the program desires to report.

3 H. Every pretrial release program established pursuant to this
4 section shall utilize the services of local providers; provided,
5 however, any program in continuous existence since July 1, 1999,
6 shall be exempt from the provisions of this subsection.

7 SECTION 4. This act shall become effective November 1, 2009.

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