

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2168

By: McCullough

4
5 AS INTRODUCED

6 An Act relating to crimes and punishment; amending 21
7 O.S. 2001, Section 644, as last amended by Section 1,
8 Chapter 318, O.S.L. 2008 (21 O.S. Supp. 2008, Section
9 644), which relates to assault and battery and
10 domestic violence; providing time limitations for use
11 of prior conviction records; amending 22 O.S. 2001,
12 Section 991c, as last amended by Section 2, Chapter
13 374, O.S.L. 2005 (22 O.S. Supp. 2008, Section 991c),
14 which relates to deferred sentences; increasing
15 amount of years that courts may defer sentencing
16 proceedings; modifying language; and providing an
17 effective date.

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

19 SECTION 1. AMENDATORY 21 O.S. 2001, Section 644, as last
20 amended by Section 1, Chapter 318, O.S.L. 2008 (21 O.S. Supp. 2008,
21 Section 644), is amended to read as follows:

22 Section 644. A. Assault shall be punishable by imprisonment in
23 a county jail not exceeding thirty (30) days, or by a fine of not
24 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

1 than One Thousand Dollars (\$1,000.00), or by both such fine and
2 imprisonment.

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

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

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

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

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

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

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

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

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

1 fifty-two (52) weeks from any court-ordered domestic
2 abuse counseling or treatment program shall be prima
3 facie evidence of the violation of the conditions of
4 probation for the district attorney to seek
5 acceleration or revocation of any probation entered by
6 the court.

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
24 manage anger, the defendant shall be ordered to

1 complete the counseling as per the recommendations of
2 the domestic violence treatment program or licensed
3 professional;

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

18 b. The court shall set a second review hearing after the
19 completion of the counseling or treatment to assure
20 the attendance and compliance of the defendant with
21 the provisions of this subsection and the domestic
22 abuse counseling or treatment requirements. The court
23 shall retain continuing jurisdiction over the
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1 defendant during the course of ordered counseling
2 through the final review hearing;

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

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

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

22 7. If funding is available, a referee may be appointed and
23 assigned by the presiding judge of the district court to hear
24 designated cases set for review under this subsection. Reasonable

1 compensation for the referees shall be fixed by the presiding judge.
2 The referee shall meet the requirements and perform all duties in
3 the same manner and procedure as set forth in Sections 7003-8.6 and
4 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees
5 appointed in juvenile proceedings.

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

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

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

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

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

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

1 years nor more than ten (10) years, or by a fine of not more than
2 Twenty Thousand Dollars (\$20,000.00), or by both such fine and
3 imprisonment. As used in this subsection, "strangulation" means a
4 form of asphyxia characterized by closure of the blood vessels or
5 air passages of the neck as a result of external pressure on the
6 neck.

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

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

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

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

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

21 L. In the course of prosecuting any charge of domestic abuse,
22 stalking, harassment, rape, or violation of a protective order, the
23 prosecutor shall provide the court, prior to sentencing or any plea
24 agreement, a local history and any other available history of past

1 convictions of the defendant within the last ten (10) years relating
2 to domestic abuse, stalking, harassment, rape, violation of a
3 protective order, or any other violent misdemeanor or felony
4 convictions.

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

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

17 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991c, as
18 last amended by Section 2, Chapter 374, O.S.L. 2005 (22 O.S. Supp.
19 2008, Section 991c), is amended to read as follows:

20 Section 991c. A. Upon a verdict or plea of guilty or upon a
21 plea of nolo contendere, but before a judgment of guilt, the court
22 may, without entering a judgment of guilt and with the consent of
23 the defendant, defer further proceedings upon the specific
24 conditions prescribed by the court not to exceed a ~~five-year~~ ten-

1 year period. The court shall first consider restitution among the
2 various conditions it may prescribe. The court may also consider
3 ordering the defendant to:

- 4 1. Pay court costs;
- 5 2. Pay an assessment in lieu of any fine authorized by law for
6 the offense;
- 7 3. Pay any other assessment or cost authorized by law;
- 8 4. Engage in a term of community service without compensation,
9 according to a schedule consistent with the employment and family
10 responsibilities of the defendant;
- 11 5. County jail confinement for a period not to exceed ninety
12 (90) days or the maximum amount of jail time provided for the
13 offense, if it is less than ninety (90) days;
- 14 6. Pay an amount as reimbursement for reasonable attorney fees,
15 to be paid into the court fund, if a court-appointed attorney has
16 been provided to defendant;
- 17 7. Be supervised in the community for a period not to exceed
18 two (2) years. As a condition of any supervision, the defendant
19 shall be required to pay a supervision fee of Forty Dollars (\$40.00)
20 per month. The supervision fee shall be waived in whole or part by
21 the supervisory agency when the accused is indigent. No person
22 shall be denied supervision based solely on the ~~person's~~ inability
23 of the person to pay a fee;

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

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

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

12 11. Any combination of the above provisions.

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

1 evaluating the receptivity to treatment and prognosis of the person.
2 The court shall order the person to reimburse the facility or
3 qualified practitioner for the evaluation. The Department of Mental
4 Health and Substance Abuse Services shall establish a fee schedule,
5 based upon ~~a person's~~ the ability of a person to pay, provided the
6 fee for an evaluation shall not exceed Seventy-five Dollars
7 (\$75.00). The evaluation shall be conducted at a certified
8 facility, the office of a qualified practitioner or at another
9 location as ordered by the court. The facility or qualified
10 practitioner shall, within seventy-two (72) hours from the time the
11 person is assessed, submit a written report to the court for the
12 purpose of assisting the court in its determination of conditions
13 for deferred sentence. No person, agency or facility operating an
14 alcohol and drug substance abuse evaluation program certified by the
15 Department of Mental Health and Substance Abuse Services shall
16 solicit or refer any person evaluated pursuant to this subsection
17 for any treatment program or alcohol and drug substance abuse
18 service in which the person, agency or facility has a vested
19 interest; however, this provision shall not be construed to prohibit
20 the court from ordering participation in or any person from
21 voluntarily utilizing a treatment program or alcohol and drug
22 substance abuse service offered by such person, agency or facility.
23 Any evaluation report submitted to the court pursuant to this
24 subsection shall be handled in a manner which will keep the report

1 confidential from ~~the general public's~~ review by the general public.
2 Nothing contained in this subsection shall be construed to prohibit
3 the court from ordering judgment and sentence in the event the
4 defendant fails or refuses to comply with an order of the court to
5 obtain the evaluation required by this subsection. As used in this
6 subsection, "qualified practitioner" means a person with at least a
7 bachelor's degree in substance abuse treatment, mental health or a
8 related health care field and at least two (2) ~~years~~ years of
9 experience in providing alcohol abuse treatment, other drug abuse
10 treatment, or both alcohol and other drug abuse treatment who is
11 certified each year by the Department of Mental Health and Substance
12 Abuse Services to provide these assessments. However, any person
13 who does not meet the requirements for a qualified practitioner as
14 defined herein, but who has been previously certified by the
15 Department of Mental Health and Substance Abuse Services to provide
16 alcohol or drug treatment or assessments, shall be considered a
17 qualified practitioner provided all education, experience and
18 certification requirements stated herein are met by September 1,
19 1995. The court may also require the person to participate in one
20 or both of the following:

- 21 1. An alcohol and drug substance abuse course, pursuant to
22 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and
- 23 2. A victims impact panel program, if such a program is offered
24 in the county where the judgment is rendered. The defendant shall

1 be required to pay a fee, not less than Five Dollars (\$5.00) nor
2 more than Fifteen Dollars (\$15.00) as set by the governing authority
3 of the program and approved by the court, to the victims impact
4 panel program to offset the cost of participation by the defendant,
5 if in the opinion of the court the defendant has the ability to pay
6 such fee.

7 C. Upon completion of the conditions of the deferred judgment,
8 and upon a finding by the court that the conditions have been met
9 and all fines, fees, and monetary assessments have been paid as
10 ordered, the defendant shall be discharged without a court judgment
11 of guilt, and the court shall order the verdict or plea of guilty or
12 plea of nolo contendere to be expunged from the record and the
13 charge shall be dismissed with prejudice to any further action. The
14 procedure to expunge the ~~defendant's~~ record of the defendant shall
15 be as follows:

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

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

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

23 4. No information concerning the confidential file shall be
24 revealed or released, except upon written order of a judge of the

1 district court or upon written request by the named defendant to the
2 court clerk for the purpose of updating the ~~defendant's~~ criminal
3 history record of the defendant with the Oklahoma State Bureau of
4 Investigation; and

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

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

11 E. Upon violation of any condition of the deferred judgment,
12 the court may enter a judgment of guilt and proceed as provided in
13 Section 991a of this title or may modify any condition imposed.
14 Provided, however, if the deferred judgment is for a felony offense,
15 and the defendant commits another felony offense, the defendant
16 shall not be allowed bail pending appeal.

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

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

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

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

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

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