

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 3371

 By: Ford

7 AS INTRODUCED

8 An Act relating to crimes and punishments; amending
9 21 O.S. 2011, Section 644, as last amended by Section
10 1, Chapter 200, O.S.L. 2019 (21 O.S. Supp. 2019,
 Section 644), which relates to penalties for assault
11 and battery and domestic abuse offenses; increasing
12 penalty for certain unlawful act; amending 57 O.S.
13 2011, Section 571, as last amended by Section 1,
 Chapter 152, O.S.L. 2019 (57 O.S. Supp. 2019, Section
14 571), which relates to the definition for violent
15 crime; expanding scope of definition to include
16 certain crime; and providing an effective date.

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

17 SECTION 1. AMENDATORY 21 O.S. 2011, Section 644, as last
18 amended by Section 1, Chapter 200, O.S.L. 2019 (21 O.S. Supp. 2019,
19 Section 644), is amended to read as follows:

20 Section 644. A. Assault shall be punishable by imprisonment in
21 a county jail not exceeding thirty (30) days, or by a fine of not
22 more than Five Hundred Dollars (\$500.00), or by both such fine and
23 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 intimate partner or a family or household member
7 as defined by Section 60.1 of Title 22 of the Oklahoma Statutes
8 shall be guilty of domestic abuse. Upon conviction, the defendant
9 shall be punished by imprisonment in the county jail for not more
10 than one (1) year, or by a fine not exceeding Five Thousand Dollars
11 (\$5,000.00), or by both such fine and imprisonment. Upon conviction
12 for a second or subsequent offense, the person shall be punished by
13 imprisonment in the custody of the Department of Corrections for not
14 more than four (4) years, or by a fine not exceeding Five Thousand
15 Dollars (\$5,000.00), or by both such fine and imprisonment. The
16 provisions of Section 51.1 of this title shall apply to any second
17 or subsequent offense.

18 D. 1. Any person who, with intent to do bodily harm and
19 without justifiable or excusable cause, commits any assault,
20 battery, or assault and battery upon an intimate partner or a family
21 or household member as defined by Section 60.1 of Title 22 of the
22 Oklahoma Statutes with any sharp or dangerous weapon, upon
23 conviction, is guilty of domestic assault or domestic assault and
24 battery with a dangerous weapon which shall be a felony and

1 punishable by imprisonment in the custody of the Department of
2 Corrections not exceeding ten (10) years, or by imprisonment in a
3 county jail not exceeding one (1) year. The provisions of Section
4 51.1 of this title shall apply to any second or subsequent
5 conviction for a violation of this paragraph.

6 2. Any person who, without such cause, shoots an intimate
7 partner or a family or household member as defined by Section 60.1
8 of Title 22 of the Oklahoma Statutes by means of any deadly weapon
9 that is likely to produce death shall, upon conviction, be guilty of
10 domestic assault and battery with a deadly weapon which shall be a
11 felony punishable by imprisonment in the custody of the Department
12 of Corrections not exceeding life. The provisions of Section 51.1
13 of this title shall apply to any second or subsequent conviction for
14 a violation of this paragraph.

15 E. 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 F. 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 G. 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
24 not exceeding Seven Thousand Dollars (\$7,000.00), or by both such

1 fine and imprisonment. The provisions of Section 51.1 of this title
2 shall apply to any second or subsequent offense. For every
3 conviction of a domestic abuse crime in violation of any provision
4 of this section committed against an intimate partner or a family or
5 household member as defined by Section 60.1 of Title 22 of the
6 Oklahoma Statutes, the court shall:

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

11 2. a. ~~The court shall require~~ Require the defendant to
12 complete an assessment and follow the recommendations
13 of a batterers' intervention program certified by the
14 Attorney General. If the defendant is ordered to
15 participate in a batterers' intervention program, the
16 order shall require the defendant to attend the
17 program for a minimum of fifty-two (52) weeks,
18 complete the program, and be evaluated before and
19 after attendance of the program by program staff.
20 Three unexcused absences in succession or seven
21 unexcused absences in a period of fifty-two (52) weeks
22 from any court-ordered batterers' intervention program
23 shall be prima facie evidence of the violation of the
24 conditions of probation for the district attorney to

1 seek acceleration or revocation of any probation
2 entered by the court~~-, or~~ or

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

3. a. ~~The court shall set~~ Set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program certified by the Attorney General and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs a and b of this paragraph and paragraphs 4 1 and 5 2 of ~~this~~ subsection H of this section. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two

1 (52) weeks from any court-ordered domestic abuse
2 counseling or treatment program shall be prima facie
3 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~~., and~~

7 b. ~~The court shall set~~ Set a second review hearing after
8 the completion of the counseling or treatment 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 shall retain continuing jurisdiction over
13 the defendant during the course of ordered counseling
14 through the final review hearing~~.,~~

15 ~~4. H. 1.~~ The court may set subsequent or other review hearings
16 as the court determines necessary to assure the defendant attends
17 and fully complies with the provisions of subsection G of this
18 ~~subsection~~ section and the domestic abuse counseling or treatment
19 requirements~~.,~~

20 ~~5. 2.~~ At any review hearing, if the defendant is not
21 satisfactorily attending individual counseling or a domestic abuse
22 counseling or treatment program or is not in compliance with any
23 domestic abuse counseling or treatment requirements, the court may
24 order the defendant to further or continue counseling, treatment, or

1 other necessary services. The court may revoke all or any part of a
2 suspended sentence, deferred sentence, or probation pursuant to
3 Section 991b of Title 22 of the Oklahoma Statutes and subject the
4 defendant to any or all remaining portions of the original
5 sentence~~+~~.

6 ~~6.~~ 3. At the first review hearing, the court shall require the
7 defendant to appear in court. Thereafter, for any subsequent review
8 hearings, the court may accept a report on the progress of the
9 defendant from individual counseling, domestic abuse counseling, or
10 the treatment program. There shall be no requirement for the victim
11 to attend review hearings~~+~~ and.

12 ~~7.~~ 4. If funding is available, a referee may be appointed and
13 assigned by the presiding judge of the district court to hear
14 designated cases set for review under this subsection. Reasonable
15 compensation for the referees shall be fixed by the presiding judge.
16 The referee shall meet the requirements and perform all duties in
17 the same manner and procedure as set forth in Sections 1-8-103 and
18 2-2-702 of Title 10A of the Oklahoma Statutes pertaining to referees
19 appointed in juvenile proceedings.

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

22 ~~H.~~ I. As used in subsection G of this section, "in the presence
23 of a child" means in the physical presence of a child; or having
24 knowledge that a child is present and may see or hear an act of

1 domestic violence. For the purposes of subsections C and G of this
2 section, "child" may be any child whether or not related to the
3 victim or the defendant.

4 ~~I.~~ J. For the purposes of subsections C and G of this section,
5 any conviction for assault and battery against an intimate partner
6 or a family or household member as defined by Section 60.1 of Title
7 22 of the Oklahoma Statutes shall constitute a sufficient basis for
8 a felony charge:

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

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

16 ~~J.~~ K. Any person who commits any assault and battery with
17 intent to cause great bodily harm by strangulation or attempted
18 strangulation against an intimate partner or a family or household
19 member as defined by Section 60.1 of Title 22 of the Oklahoma
20 Statutes shall, upon conviction, be guilty of domestic abuse by
21 strangulation and shall be punished by imprisonment in the custody
22 of the Department of Corrections for a period of not less than one
23 (1) year nor more than ~~three (3)~~ ten (10) years, or by a fine of not
24 more than Three Thousand Dollars (\$3,000.00), or by both such fine

1 and imprisonment. Upon a second or subsequent conviction for a
2 violation of this section, the defendant shall be punished by
3 imprisonment in the custody of the Department of Corrections for a
4 period of not less than three (3) years nor more than ~~ten (10)~~
5 twenty (20) years, or by a fine of not more than Twenty Thousand
6 Dollars (\$20,000.00), or by both such fine and imprisonment. The
7 provisions of Section 51.1 of this title shall apply to any second
8 or subsequent conviction of a violation of this subsection. As used
9 in this subsection, "strangulation" means any form of asphyxia;
10 including, but not limited to, asphyxia characterized by closure of
11 the blood vessels or air passages of the neck as a result of
12 external pressure on the neck or the closure of the nostrils or
13 mouth as a result of external pressure on the head.

14 ~~K.~~ L. Any district court of this state and any judge thereof
15 shall be immune from any liability or prosecution for issuing an
16 order that requires a defendant to:

- 17 1. Attend a treatment program for domestic abusers certified by
18 the Attorney General;
- 19 2. Attend counseling or treatment services ordered as part of
20 any suspended or deferred sentence or probation; and
- 21 3. Attend, complete, and be evaluated before and after
22 attendance by a treatment program for domestic abusers, certified by
23 the Attorney General.

1 ~~L.~~ M. There shall be no charge of fees or costs to any victim
2 of domestic violence, stalking, or sexual assault in connection with
3 the prosecution of a domestic violence, stalking, or sexual assault
4 offense in this state.

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

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

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

1 ~~P.~~ Q. Any pleas of guilty or nolo contendere or finding of
2 guilt to a violation of any provision of this section shall
3 constitute a conviction of the offense for the purpose of any
4 subsection of this section under which the existence of a prior
5 conviction is relevant for a period of ten (10) years following the
6 completion of any sentence or court imposed probationary term.

7 SECTION 2. AMENDATORY 57 O.S. 2011, Section 571, as last
8 amended by Section 1, Chapter 152, O.S.L. 2019 (57 O.S. Supp. 2019,
9 Section 571), is amended to read as follows:

10 Section 571. As used in the Oklahoma Statutes, unless another
11 definition is specified:

12 1. "Capacity" means the actual available bedspace as certified
13 by the State Board of Corrections subject to applicable federal and
14 state laws and the rules and regulations promulgated under such
15 laws; and

16 2. "Violent crime" means any of the following felony offenses
17 and any attempts to commit or conspiracy or solicitation to commit
18 the following crimes:

19 a. assault, battery, or assault and battery with a
20 dangerous or deadly weapon, as provided for in
21 Sections 645 and 652 of Title 21 of the Oklahoma
22 Statutes,

23 b. assault, battery, or assault and battery with a deadly
24 weapon or by other means likely to produce death or

- 1 great bodily harm, as provided for in Section 652 of
2 Title 21 of the Oklahoma Statutes,
- 3 c. aggravated assault and battery on a police officer,
4 sheriff, highway patrolman, or any other officer of
5 the law, as provided for in Section 650 of Title 21 of
6 the Oklahoma Statutes,
- 7 d. poisoning with intent to kill, as provided for in
8 Section 651 of Title 21 of the Oklahoma Statutes,
- 9 e. shooting with intent to kill, as provided for in
10 Section 652 of Title 21 of the Oklahoma Statutes,
- 11 f. assault with intent to kill, as provided for in
12 Section 653 of Title 21 of the Oklahoma Statutes,
- 13 g. assault with intent to commit a felony, as provided
14 for in Section 681 of Title 21 of the Oklahoma
15 Statutes,
- 16 h. assaults with a dangerous weapon while masked or
17 disguised, as provided for in Section 1303 of Title 21
18 of the Oklahoma Statutes,
- 19 i. murder in the first degree, as provided for in Section
20 701.7 of Title 21 of the Oklahoma Statutes,
- 21 j. murder in the second degree, as provided for in
22 Section 701.8 of Title 21 of the Oklahoma Statutes,
- 23 k. manslaughter in the first degree, as provided for in
24 Section 711 of Title 21 of the Oklahoma Statutes,

- 1 l. manslaughter in the second degree, as provided for in
2 Section 716 of Title 21 of the Oklahoma Statutes,
3 m. kidnapping, as provided for in Section 741 of Title 21
4 of the Oklahoma Statutes,
5 n. burglary in the first degree, as provided for in
6 Section 1431 of Title 21 of the Oklahoma Statutes,
7 o. burglary with explosives, as provided for in Section
8 1441 of Title 21 of the Oklahoma Statutes,
9 p. kidnapping for extortion, as provided for in Section
10 745 of Title 21 of the Oklahoma Statutes,
11 q. maiming, as provided for in Section 751 of Title 21 of
12 the Oklahoma Statutes,
13 r. robbery, as provided for in Section 791 of Title 21 of
14 the Oklahoma Statutes,
15 s. robbery in the first degree, as provided for in
16 Section 797 et seq. of Title 21 of the Oklahoma
17 Statutes,
18 t. robbery in the second degree, as provided for in
19 Section 797 et seq. of Title 21 of the Oklahoma
20 Statutes,
21 u. armed robbery, as provided for in Section 801 of Title
22 21 of the Oklahoma Statutes,
23 v. robbery by two or more persons, as provided for in
24 Section 800 of Title 21 of the Oklahoma Statutes,

- 1 w. robbery with dangerous weapon or imitation firearm, as
2 provided for in Section 801 of Title 21 of the
3 Oklahoma Statutes,
- 4 x. child abuse, as provided for in Section 843.5 of Title
5 21 of the Oklahoma Statutes,
- 6 y. wiring any equipment, vehicle or structure with
7 explosives, as provided for in Section 849 of Title 21
8 of the Oklahoma Statutes,
- 9 z. forcible sodomy, as provided for in Section 888 of
10 Title 21 of the Oklahoma Statutes,
- 11 aa. rape in the first degree, as provided for in Section
12 1114 of Title 21 of the Oklahoma Statutes,
- 13 bb. rape in the second degree, as provided for in Section
14 1114 of Title 21 of the Oklahoma Statutes,
- 15 cc. rape by instrumentation, as provided for in Section
16 1111.1 of Title 21 of the Oklahoma Statutes,
- 17 dd. lewd or indecent proposition or lewd or indecent act
18 with a child under sixteen (16) years of age, as
19 provided for in Section 1123 of Title 21 of the
20 Oklahoma Statutes,
- 21 ee. use of a firearm or offensive weapon to commit or
22 attempt to commit a felony, as provided for in Section
23 1287 of Title 21 of the Oklahoma Statutes,
- 24

- 1 ff. pointing firearms, as provided for in Section 1279 of
2 Title 21 of the Oklahoma Statutes,
- 3 gg. rioting, as provided for in Section 1311 of Title 21
4 of the Oklahoma Statutes,
- 5 hh. inciting to riot, as provided for in Section 1320.2 of
6 Title 21 of the Oklahoma Statutes,
- 7 ii. arson in the first degree, as provided for in Section
8 1401 of Title 21 of the Oklahoma Statutes,
- 9 jj. injuring or burning public buildings, as provided for
10 in Section 349 of Title 21 of the Oklahoma Statutes,
- 11 kk. sabotage, as provided for in Section 1262 of Title 21
12 of the Oklahoma Statutes,
- 13 ll. criminal syndicalism, as provided for in Section 1261
14 of Title 21 of the Oklahoma Statutes,
- 15 mm. extortion, as provided for in Section 1481 of Title 21
16 of the Oklahoma Statutes,
- 17 nn. obtaining signature by extortion, as provided for in
18 Section 1485 of Title 21 of the Oklahoma Statutes,
- 19 oo. seizure of a bus, discharging firearm or hurling
20 missile at bus, as provided for in Section 1903 of
21 Title 21 of the Oklahoma Statutes,
- 22 pp. mistreatment of a mental patient, as provided for in
23 Section 843.1 of Title 21 of the Oklahoma Statutes,
24

1 qq. using a vehicle to facilitate the discharge of a
2 weapon pursuant to Section 652 of Title 21 of the
3 Oklahoma Statutes,
4 rr. bombing offenses as defined in Section 1767.1 of Title
5 21 of the Oklahoma Statutes,
6 ss. child pornography or aggravated child pornography as
7 defined in Section 1021.2, 1021.3, 1024.1 or 1040.12a
8 of Title 21 of the Oklahoma Statutes,
9 tt. child prostitution as defined in Section 1030 of Title
10 21 of the Oklahoma Statutes,
11 uu. abuse of a vulnerable adult as defined in Section 10-
12 103 of Title 43A of the Oklahoma Statutes who is a
13 resident of a nursing facility,
14 vv. aggravated trafficking as provided for in subsection C
15 of Section 2-415 of Title 63 of the Oklahoma Statutes,
16 ww. aggravated assault and battery upon any person
17 defending another person from assault and battery, as
18 provided for in Section 646 of Title 21 of the
19 Oklahoma Statutes,
20 xx. human trafficking, as provided for in Section 748 of
21 Title 21 of the Oklahoma Statutes,
22 yy. terrorism crimes as provided in Section 1268 et seq.
23 of Title 21 of the Oklahoma Statutes, ~~or~~
24

1 zz. eluding a peace officer, as provided for in subsection
2 B or C of Section 540A of Title 21 of the Oklahoma
3 Statutes, or

4 aaa. domestic abuse by strangulation, as provided for in
5 Section 644 of Title 21 of the Oklahoma Statutes.

6 Such offenses shall constitute exceptions to nonviolent offenses
7 pursuant to Article VI, Section 10 of the Oklahoma Constitution.

8 SECTION 3. This act shall become effective November 1, 2020.

9
10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/06/2020 - DO
11 PASS.