

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1492

By: Floyd

AS INTRODUCED

An Act relating to crime and punishment; amending 21 O.S. 2011, Section 644, as last amended by Section 1, Chapter 200, O.S.L. 2019 (21 O.S. Supp. 2019, Section 644), which relates to domestic abuse; modifying punishments; updating statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 644, as last amended by Section 1, Chapter 200, O.S.L. 2019 (21 O.S. Supp. 2019, 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.

1 C. Any person who commits any assault and battery against a
2 current or former intimate partner or a family or household member
3 as defined by Section 60.1 of Title 22 of the Oklahoma Statutes
4 shall be guilty of domestic abuse which shall be a felony. Upon
5 conviction, the defendant shall be punished by imprisonment in the
6 ~~county jail~~ custody of the Department of Corrections for not more
7 than ~~one (1) year~~ two (2) years, or by a fine not exceeding Five
8 Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.
9 Upon conviction for a second or subsequent offense, the person shall
10 be punished by imprisonment in the custody of the Department of
11 Corrections for not more than four (4) years, or by a fine not
12 exceeding Five Thousand Dollars (\$5,000.00), or by both such fine
13 and imprisonment. The provisions of Section 51.1 of this title
14 shall apply to any second or subsequent offense.

15 D. 1. Any person who, with intent to do bodily harm and
16 without justifiable or excusable cause, commits any assault,
17 battery, or assault and battery upon an intimate partner or a family
18 or household member as defined by Section 60.1 of Title 22 of the
19 Oklahoma Statutes with any sharp or dangerous weapon, upon
20 conviction, is guilty of domestic assault or domestic assault and
21 battery with a dangerous weapon which shall be a felony and
22 punishable by imprisonment in the custody of the Department of
23 Corrections not exceeding ten (10) years, or by imprisonment in a
24 county jail not exceeding one (1) year. The provisions of Section

1 51.1 of this title shall apply to any second or subsequent
2 conviction for a violation of this paragraph.

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

12 E. Any person convicted of domestic abuse committed against a
13 pregnant woman with knowledge of the pregnancy shall be guilty of a
14 ~~misdemeanor~~ felony, punishable by imprisonment in the ~~county jail~~
15 ~~for not more than one (1) year~~ custody of the Department of
16 Corrections for not more than five (5) years.

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

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

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

11 G. Any person convicted of domestic abuse as defined in
12 subsection C of this section that was committed in the presence of a
13 child shall be punished by imprisonment in the ~~county jail~~ custody
14 of the Department of Corrections for not less than ~~six (6) months~~
15 one (1) year nor more than ~~one (1) year~~ three (3) years, or by a
16 fine not exceeding Five Thousand Dollars (\$5,000.00), or by both
17 such fine and imprisonment. Any person convicted of a second or
18 subsequent domestic abuse as defined in subsection C of this section
19 that was committed in the presence of a child shall be punished by
20 imprisonment in the custody of the Department of Corrections for not
21 less than one (1) year nor more than five (5) years, or by a fine
22 not exceeding Seven Thousand Dollars (\$7,000.00), or by both such
23 fine and imprisonment. The provisions of Section 51.1 of this title
24 shall apply to any second or subsequent offense. For every

1 conviction of a domestic abuse crime in violation of any provision
2 of this section committed against an intimate partner or a family or
3 household member as defined by Section 60.1 of Title 22 of the
4 Oklahoma Statutes, the court shall:

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

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

22 3. a. The court shall set a review hearing no more than one
23 hundred twenty (120) days after the defendant is
24 ordered to participate in a domestic abuse counseling

1 program or undergo treatment for domestic abuse to
2 assure the attendance and compliance of the defendant
3 with the provisions of this subsection and the
4 domestic abuse counseling or treatment requirements.
5 The court may suspend sentencing of the defendant
6 until the defendant has presented proof to the court
7 of enrollment in a program of treatment for domestic
8 abuse by an individual licensed practitioner or a
9 domestic abuse treatment program certified by the
10 Attorney General and attendance at weekly sessions of
11 such program. Such proof shall be presented to the
12 court by the defendant no later than one hundred
13 twenty (120) days after the defendant is ordered to
14 such counseling or treatment. At such time, the court
15 may complete sentencing, beginning the period of the
16 sentence from the date that proof of enrollment is
17 presented to the court, and schedule reviews as
18 required by subparagraphs a and b of this paragraph
19 and paragraphs 4 and 5 of this subsection. Three
20 unexcused absences in succession or seven unexcused
21 absences in a period of fifty-two (52) weeks from any
22 court-ordered domestic abuse counseling or treatment
23 program shall be prima facie evidence of the violation
24 of the conditions of probation for the district

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

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

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

15 5. At any review hearing, if the defendant is not
16 satisfactorily attending individual counseling or a domestic abuse
17 counseling or treatment program or is not in compliance with any
18 domestic abuse counseling or treatment requirements, the court may
19 order the defendant to further or continue counseling, treatment, or
20 other necessary services. The court may revoke all or any part of a
21 suspended sentence, deferred sentence, or probation pursuant to
22 Section 991b of Title 22 of the Oklahoma Statutes and subject the
23 defendant to any or all remaining portions of the original sentence;
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1 6. At the first review hearing, the court shall require the
2 defendant to appear in court. Thereafter, for any subsequent review
3 hearings, the court may accept a report on the progress of the
4 defendant from individual counseling, domestic abuse counseling, or
5 the treatment program. There shall be no requirement for the victim
6 to attend review hearings; and

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

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

17 H. As used in subsection G of this section, "in the presence of
18 a child" means in the physical presence of a child; or having
19 knowledge that a child is present and may see or hear an act of
20 domestic violence. For the purposes of subsections C and G of this
21 section, "child" may be any child whether or not related to the
22 victim or the defendant.

23 I. For the purposes of subsections C and G of this section, any
24 conviction for assault and battery against an intimate partner or a
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1 family or household member as defined by Section 60.1 of Title 22 of
2 the Oklahoma Statutes shall constitute a sufficient basis for a
3 felony charge:

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

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

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

1 Dollars (\$20,000.00), or by both such fine and imprisonment. The
2 provisions of Section 51.1 of this title shall apply to any second
3 or subsequent conviction of a violation of this subsection. As used
4 in this subsection, "strangulation" means any form of asphyxia;
5 including, but not limited to, asphyxia characterized by closure of
6 the blood vessels or air passages of the neck as a result of
7 external pressure on the neck or the closure of the nostrils or
8 mouth as a result of external pressure on the head.

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

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

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

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

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

23 M. In the course of prosecuting any charge of domestic abuse,
24 stalking, harassment, rape, or violation of a protective order, the

1 prosecutor shall provide the court, prior to sentencing or any plea
2 agreement, a local history and any other available history of past
3 convictions of the defendant within the last ten (10) years relating
4 to domestic abuse, stalking, harassment, rape, violation of a
5 protective order, or any other violent misdemeanor or felony
6 convictions.

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

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

19 P. Any pleas of guilty or nolo contendere or finding of guilt
20 to a violation of any provision of this section shall constitute a
21 conviction of the offense for the purpose of any subsection of this
22 section under which the existence of a prior conviction is relevant
23 for a period of ten (10) years following the completion of any
24 sentence or court imposed probationary term.

SECTION 2. This act shall become effective November 1, 2020.

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