

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3371

By: Ford

AS INTRODUCED

An Act relating to crimes and punishments; 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 penalties for assault and battery and domestic abuse offenses; increasing penalty for certain unlawful act; amending 57 O.S. 2011, Section 571, as last amended by Section 1, Chapter 152, O.S.L. 2019 (57 O.S. Supp. 2019, Section 571), which relates to the definition for violent crime; expanding scope of definition to include certain crime; 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

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

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

1 county jail not exceeding one (1) year. The provisions of Section
2 51.1 of this title shall apply to any second or subsequent
3 conviction for a violation of this paragraph.

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

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

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

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

1 of this section committed against an intimate partner or a family or
2 household member as defined by Section 60.1 of Title 22 of the
3 Oklahoma Statutes, the court shall:

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

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

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

23 3. a. ~~The court shall set~~ Set a review hearing no more than
24 one hundred twenty (120) days after the defendant is

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

1 evidence of the violation of the conditions of
2 probation for the district attorney to seek
3 acceleration or revocation of any probation entered by
4 the court~~-, and~~

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

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

18 ~~5. 2.~~ At any review hearing, if the defendant is not
19 satisfactorily attending individual counseling or a domestic abuse
20 counseling or treatment program or is not in compliance with any
21 domestic abuse counseling or treatment requirements, the court may
22 order the defendant to further or continue counseling, treatment, or
23 other necessary services. The court may revoke all or any part of a
24 suspended sentence, deferred sentence, or probation pursuant to

1 Section 991b of Title 22 of the Oklahoma Statutes and subject the
2 defendant to any or all remaining portions of the original
3 sentence~~+~~.

4 ~~6.~~ 3. At the first review hearing, the court shall require the
5 defendant to appear in court. Thereafter, for any subsequent review
6 hearings, the court may accept a report on the progress of the
7 defendant from individual counseling, domestic abuse counseling, or
8 the treatment program. There shall be no requirement for the victim
9 to attend review hearings~~;~~and.

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

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

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

1 section, "child" may be any child whether or not related to the
2 victim or the defendant.

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

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

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

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

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

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

16 1. Attend a treatment program for domestic abusers certified by
17 the Attorney General;

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

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

23 ~~L.~~ M. There shall be no charge of fees or costs to any victim
24 of domestic violence, stalking, or sexual assault in connection with

1 the prosecution of a domestic violence, stalking, or sexual assault
2 offense in this state.

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

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

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

23 ~~P.~~ Q. Any pleas of guilty or nolo contendere or finding of
24 guilt to a violation of any provision of this section shall

1 constitute a conviction of the offense for the purpose of any
2 subsection of this section under which the existence of a prior
3 conviction is relevant for a period of ten (10) years following the
4 completion of any sentence or court imposed probationary term.

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

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

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

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

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

21 b. assault, battery, or assault and battery with a deadly
22 weapon or by other means likely to produce death or
23 great bodily harm, as provided for in Section 652 of
24 Title 21 of the Oklahoma Statutes,

- c. aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law, as provided for in Section 650 of Title 21 of the Oklahoma Statutes,
- d. poisoning with intent to kill, as provided for in Section 651 of Title 21 of the Oklahoma Statutes,
- e. shooting with intent to kill, as provided for in Section 652 of Title 21 of the Oklahoma Statutes,
- f. assault with intent to kill, as provided for in Section 653 of Title 21 of the Oklahoma Statutes,
- g. assault with intent to commit a felony, as provided for in Section 681 of Title 21 of the Oklahoma Statutes,
- h. assaults with a dangerous weapon while masked or disguised, as provided for in Section 1303 of Title 21 of the Oklahoma Statutes,
- i. murder in the first degree, as provided for in Section 701.7 of Title 21 of the Oklahoma Statutes,
- j. murder in the second degree, as provided for in Section 701.8 of Title 21 of the Oklahoma Statutes,
- k. manslaughter in the first degree, as provided for in Section 711 of Title 21 of the Oklahoma Statutes,
- l. manslaughter in the second degree, as provided for in Section 716 of Title 21 of the Oklahoma Statutes,

- m. kidnapping, as provided for in Section 741 of Title 21 of the Oklahoma Statutes,
- n. burglary in the first degree, as provided for in Section 1431 of Title 21 of the Oklahoma Statutes,
- o. burglary with explosives, as provided for in Section 1441 of Title 21 of the Oklahoma Statutes,
- p. kidnapping for extortion, as provided for in Section 745 of Title 21 of the Oklahoma Statutes,
- q. maiming, as provided for in Section 751 of Title 21 of the Oklahoma Statutes,
- r. robbery, as provided for in Section 791 of Title 21 of the Oklahoma Statutes,
- s. robbery in the first degree, as provided for in Section 797 et seq. of Title 21 of the Oklahoma Statutes,
- t. robbery in the second degree, as provided for in Section 797 et seq. of Title 21 of the Oklahoma Statutes,
- u. armed robbery, as provided for in Section 801 of Title 21 of the Oklahoma Statutes,
- v. robbery by two or more persons, as provided for in Section 800 of Title 21 of the Oklahoma Statutes,

- w. robbery with dangerous weapon or imitation firearm, as provided for in Section 801 of Title 21 of the Oklahoma Statutes,
- x. child abuse, as provided for in Section 843.5 of Title 21 of the Oklahoma Statutes,
- y. wiring any equipment, vehicle or structure with explosives, as provided for in Section 849 of Title 21 of the Oklahoma Statutes,
- z. forcible sodomy, as provided for in Section 888 of Title 21 of the Oklahoma Statutes,
- aa. rape in the first degree, as provided for in Section 1114 of Title 21 of the Oklahoma Statutes,
- bb. rape in the second degree, as provided for in Section 1114 of Title 21 of the Oklahoma Statutes,
- cc. rape by instrumentation, as provided for in Section 1111.1 of Title 21 of the Oklahoma Statutes,
- dd. lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, as provided for in Section 1123 of Title 21 of the Oklahoma Statutes,
- ee. use of a firearm or offensive weapon to commit or attempt to commit a felony, as provided for in Section 1287 of Title 21 of the Oklahoma Statutes,

- ff. pointing firearms, as provided for in Section 1279 of Title 21 of the Oklahoma Statutes,
- gg. rioting, as provided for in Section 1311 of Title 21 of the Oklahoma Statutes,
- hh. inciting to riot, as provided for in Section 1320.2 of Title 21 of the Oklahoma Statutes,
- ii. arson in the first degree, as provided for in Section 1401 of Title 21 of the Oklahoma Statutes,
- jj. injuring or burning public buildings, as provided for in Section 349 of Title 21 of the Oklahoma Statutes,
- kk. sabotage, as provided for in Section 1262 of Title 21 of the Oklahoma Statutes,
- ll. criminal syndicalism, as provided for in Section 1261 of Title 21 of the Oklahoma Statutes,
- mm. extortion, as provided for in Section 1481 of Title 21 of the Oklahoma Statutes,
- nn. obtaining signature by extortion, as provided for in Section 1485 of Title 21 of the Oklahoma Statutes,
- oo. seizure of a bus, discharging firearm or hurling missile at bus, as provided for in Section 1903 of Title 21 of the Oklahoma Statutes,
- pp. mistreatment of a mental patient, as provided for in Section 843.1 of Title 21 of the Oklahoma Statutes,

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 57-2-9065 GRS 12/05/19