

1 **SENATE FLOOR VERSION**

2 February 12, 2020

3 **AS AMENDED**

4 SENATE BILL NO. 1103

By: Standridge of the Senate

and

Ford of the House

7  
8 **[ domestic abuse by strangulation - assault and battery**  
9 **- certain sentences and fine - effective date ]**

10  
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

15 Section 644. A. Assault shall be punishable by imprisonment in  
16 a county jail not exceeding thirty (30) days, or by a fine of not  
17 more than Five Hundred Dollars (\$500.00), or by both such fine and  
18 imprisonment.

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

23 C. Any person who commits any assault and battery against a  
24 current or former intimate partner or a family or household member

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

12 D. 1. Any person who, with intent to do bodily harm and  
13 without justifiable or excusable cause, commits any assault,  
14 battery, or assault and battery upon an intimate partner or a family  
15 or household member as defined by Section 60.1 of Title 22 of the  
16 Oklahoma Statutes with any sharp or dangerous weapon, upon  
17 conviction, is guilty of domestic assault or domestic assault and  
18 battery with a dangerous weapon which shall be a felony and  
19 punishable by imprisonment in the custody of the Department of  
20 Corrections not exceeding ten (10) years, or by imprisonment in a  
21 county jail not exceeding one (1) year. The provisions of Section  
22 51.1 of this title shall apply to any second or subsequent  
23 conviction for a violation of this paragraph.

24

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

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

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

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

24

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

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

1 household member as defined by Section 60.1 of Title 22 of the  
2 Oklahoma Statutes, the court shall:

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

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

23 b. A program for anger management, couples counseling, or  
24 family and marital counseling shall not solely qualify

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

- 20 3. a. The court shall set a review hearing no more than one  
21 hundred twenty (120) days after the defendant is  
22 ordered to participate in a domestic abuse counseling  
23 program or undergo treatment for domestic abuse to  
24 assure the attendance and compliance of the defendant

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

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

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

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

22          6. At the first review hearing, the court shall require the  
23          defendant to appear in court. Thereafter, for any subsequent review  
24          hearings, the court may accept a report on the progress of the



1 defendant from individual counseling, domestic abuse counseling, or  
2 the treatment program. There shall be no requirement for the victim  
3 to attend review hearings; and

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

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

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

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

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 J. Any person who commits any assault and battery with intent  
9 to cause great bodily harm by strangulation or attempted  
10 strangulation against an intimate partner or a family or household  
11 member as defined by Section 60.1 of Title 22 of the Oklahoma  
12 Statutes shall, upon conviction, be guilty of domestic abuse by  
13 strangulation and shall be punished by imprisonment in the custody  
14 of the Department of Corrections for a period of not **less than one**  
15 **(1) year nor** more than ~~three (3)~~ ten (10) years, or by a fine of not  
16 more than ~~Three Thousand Dollars (\$3,000.00)~~ Five Thousand Dollars  
17 (\$5,000.00), or by both such fine and imprisonment. Upon a second  
18 or subsequent conviction for a violation of this section, the  
19 defendant shall be punished by imprisonment in the custody of the  
20 Department of Corrections for a period of not **less than three (3)**  
21 **years nor** more than ~~ten (10)~~ twenty (20) years, or by a fine of not  
22 more than Twenty Thousand Dollars (\$20,000.00), or by both such fine  
23 and imprisonment. The provisions of Section 51.1 of this title  
24 shall apply to any second or subsequent conviction of a violation of

1 this subsection. As used in this subsection, "strangulation" means  
2 any form of asphyxia~~r~~ including, but not limited to, asphyxia  
3 characterized by closure of the blood vessels or air passages of the  
4 neck as a result of external pressure on the neck or the closure of  
5 the nostrils or mouth as a result of external pressure on the head.

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

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

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

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

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

20 M. In the course of prosecuting any charge of domestic abuse,  
21 stalking, harassment, rape, or violation of a protective order, the  
22 prosecutor shall provide the court, prior to sentencing or any plea  
23 agreement, a local history and any other available history of past  
24 convictions of the defendant within the last ten (10) years relating

1 to domestic abuse, stalking, harassment, rape, violation of a  
2 protective order, or any other violent misdemeanor or felony  
3 convictions.

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

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

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

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

23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
24 February 12, 2020 - DO PASS AS AMENDED