

1 **SENATE FLOOR VERSION**

2 February 16, 2023

3 SENATE BILL NO. 537

By: Pugh of the Senate

4 and

5 Boles of the House

6
7
8 An Act relating to assault and battery; amending 21
9 O.S. 2021, Section 644, which relates to domestic
10 abuse; removing certain intent stipulation; amending
11 57 O.S. 2021, Section 571, which relates to
12 definitions; expanding certain definition; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 21 O.S. 2021, Section 644, is
16 amended to read as follows:

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

21 B. Assault and battery shall be punishable by imprisonment in a
22 county jail not exceeding ninety (90) days, or by a fine of not more
23 than One Thousand Dollars (\$1,000.00), or by both such fine and
24 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. Upon conviction, the defendant
5 shall be punished by imprisonment in the county jail for not more
6 than one (1) year, or by a fine not exceeding Five Thousand Dollars
7 (\$5,000.00), or by both such fine and imprisonment. Upon conviction
8 for a second or subsequent offense, the person shall be punished by
9 imprisonment in the custody of the Department of Corrections for not
10 more than four (4) years, or by a fine not exceeding Five Thousand
11 Dollars (\$5,000.00), or by both such fine and imprisonment. The
12 provisions of Section 51.1 of this title shall apply to any second
13 or subsequent offense.

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

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

21 Any person convicted of domestic abuse committed against a
22 pregnant woman with knowledge of the pregnancy and a miscarriage
23 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 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 the defendant to complete an
9 assessment and follow the recommendations of a
10 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.

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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;

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

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 and shall be punished by imprisonment in the custody
17 of the Department of Corrections for a period of not less than one
18 (1) year nor more than three (3) years, or by a fine of not more
19 than Three Thousand Dollars (\$3,000.00), or by both such fine and
20 imprisonment. Upon a second or subsequent conviction for a
21 violation of this section, the defendant shall be punished by
22 imprisonment in the custody of the Department of Corrections for a
23 period of not less than three (3) years nor more than ten (10)
24 years, or by a fine of not more than Twenty Thousand Dollars

1 (\$20,000.00), or by both such fine and imprisonment. The provisions
2 of Section 51.1 of this title shall apply to any second or
3 subsequent conviction of a violation of this subsection. As used in
4 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 or any other
10 criminal statute under which the existence of a prior conviction is
11 relevant for a period of ten (10) years following the completion of
12 any court imposed probationary term; provided, the person has not,
13 in the meantime, been convicted of a misdemeanor involving moral
14 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.

1 SECTION 2. AMENDATORY 57 O.S. 2021, Section 571, is
2 amended to read as follows:

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

5 1. "Capacity" means the actual available bedspace as certified
6 by the State Board of Corrections subject to applicable federal and
7 state laws and the rules and regulations promulgated under such
8 laws; and

9 2. "Violent crime" means any of the following felony offenses
10 and any attempts to commit or conspiracy or solicitation to commit
11 the following crimes:

12 a. assault, battery, or assault and battery with a
13 dangerous or deadly weapon, as provided for in
14 Sections 645 and 652 of Title 21 of the Oklahoma
15 Statutes,

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

20 c. aggravated assault and battery on a police officer,
21 sheriff, highway patrolman, or any other officer of
22 the law, as provided for in Section 650 of Title 21 of
23 the Oklahoma Statutes,

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- 1 d. poisoning with intent to kill, as provided for in
2 Section 651 of Title 21 of the Oklahoma Statutes,
3 e. shooting with intent to kill, as provided for in
4 Section 652 of Title 21 of the Oklahoma Statutes,
5 f. assault with intent to kill, as provided for in
6 Section 653 of Title 21 of the Oklahoma Statutes,
7 g. assault with intent to commit a felony, as provided
8 for in Section 681 of Title 21 of the Oklahoma
9 Statutes,
10 h. assaults with a dangerous weapon while masked or
11 disguised, as provided for in Section 1303 of Title 21
12 of the Oklahoma Statutes,
13 i. murder in the first degree, as provided for in Section
14 701.7 of Title 21 of the Oklahoma Statutes,
15 j. murder in the second degree, as provided for in
16 Section 701.8 of Title 21 of the Oklahoma Statutes,
17 k. manslaughter in the first degree, as provided for in
18 Section 711 of Title 21 of the Oklahoma Statutes,
19 l. manslaughter in the second degree, as provided for in
20 Section 716 of Title 21 of the Oklahoma Statutes,
21 m. kidnapping, as provided for in Section 741 of Title 21
22 of the Oklahoma Statutes,
23 n. burglary in the first degree, as provided for in
24 Section 1431 of Title 21 of the Oklahoma Statutes,

- 1 o. burglary with explosives, as provided for in Section
2 1441 of Title 21 of the Oklahoma Statutes,
3 p. kidnapping for extortion, as provided for in Section
4 745 of Title 21 of the Oklahoma Statutes,
5 q. maiming, as provided for in Section 751 of Title 21 of
6 the Oklahoma Statutes,
7 r. robbery, as provided for in Section 791 of Title 21 of
8 the Oklahoma Statutes,
9 s. robbery in the first degree, as provided for in
10 Section 797 et seq. of Title 21 of the Oklahoma
11 Statutes,
12 t. robbery in the second degree, as provided for in
13 Section 797 et seq. of Title 21 of the Oklahoma
14 Statutes,
15 u. armed robbery, as provided for in Section 801 of Title
16 21 of the Oklahoma Statutes,
17 v. robbery by two or more persons, as provided for in
18 Section 800 of Title 21 of the Oklahoma Statutes,
19 w. robbery with dangerous weapon or imitation firearm, as
20 provided for in Section 801 of Title 21 of the
21 Oklahoma Statutes,
22 x. child abuse, as provided for in Section 843.5 of Title
23 21 of the Oklahoma Statutes,
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- 1 y. wiring any equipment, vehicle or structure with
2 explosives, as provided for in Section 849 of Title 21
3 of the Oklahoma Statutes,
4 z. forcible sodomy, as provided for in Section 888 of
5 Title 21 of the Oklahoma Statutes,
6 aa. rape in the first degree, as provided for in Section
7 1114 of Title 21 of the Oklahoma Statutes,
8 bb. rape in the second degree, as provided for in Section
9 1114 of Title 21 of the Oklahoma Statutes,
10 cc. rape by instrumentation, as provided for in Section
11 1111.1 of Title 21 of the Oklahoma Statutes,
12 dd. lewd or indecent proposition or lewd or indecent act
13 with a child under sixteen (16) years of age, as
14 provided for in Section 1123 of Title 21 of the
15 Oklahoma Statutes,
16 ee. use of a firearm or offensive weapon to commit or
17 attempt to commit a felony, as provided for in Section
18 1287 of Title 21 of the Oklahoma Statutes,
19 ff. pointing firearms, as provided for in Section 1289.16
20 of Title 21 of the Oklahoma Statutes,
21 gg. rioting, as provided for in Section 1311 of Title 21
22 of the Oklahoma Statutes,
23 hh. inciting to riot, as provided for in Section 1320.2 of
24 Title 21 of the Oklahoma Statutes,

- 1 ii. arson in the first degree, as provided for in Section
2 1401 of Title 21 of the Oklahoma Statutes,
3 jj. injuring or burning public buildings, as provided for
4 in Section 349 of Title 21 of the Oklahoma Statutes,
5 kk. sabotage, as provided for in Section 1262 of Title 21
6 of the Oklahoma Statutes,
7 ll. criminal syndicalism, as provided for in Section 1261
8 of Title 21 of the Oklahoma Statutes,
9 mm. extortion, as provided for in Section 1481 of Title 21
10 of the Oklahoma Statutes,
11 nn. obtaining signature by extortion, as provided for in
12 Section 1485 of Title 21 of the Oklahoma Statutes,
13 oo. seizure of a bus, discharging firearm or hurling
14 missile at bus, as provided for in Section 1903 of
15 Title 21 of the Oklahoma Statutes,
16 pp. mistreatment of a mental patient, as provided for in
17 Section 843.1 of Title 21 of the Oklahoma Statutes,
18 qq. using a vehicle to facilitate the discharge of a
19 weapon pursuant to Section 652 of Title 21 of the
20 Oklahoma Statutes,
21 rr. bombing offenses as defined in Section 1767.1 of Title
22 21 of the Oklahoma Statutes,
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- 1 ss. child pornography or aggravated child pornography as
2 defined in Section 1021.2, 1021.3, 1024.1 or 1040.12a
3 of Title 21 of the Oklahoma Statutes,
4 tt. child prostitution as defined in Section 1030 of Title
5 21 of the Oklahoma Statutes,
6 uu. abuse of a vulnerable adult as defined in Section 10-
7 103 of Title 43A of the Oklahoma Statutes,
8 vv. aggravated trafficking as provided for in subsection C
9 of Section 2-415 of Title 63 of the Oklahoma Statutes,
10 ww. aggravated assault and battery upon any person
11 defending another person from assault and battery, as
12 provided for in Section 646 of Title 21 of the
13 Oklahoma Statutes,
14 xx. human trafficking, as provided for in Section 748 of
15 Title 21 of the Oklahoma Statutes,
16 yy. terrorism crimes as provided in Section 1268 et seq.
17 of Title 21 of the Oklahoma Statutes,
18 zz. eluding a peace officer, as provided for in subsection
19 B or C of Section 540A of Title 21 of the Oklahoma
20 Statutes, or
21 aaa. domestic abuse by strangulation, domestic assault with
22 a dangerous weapon, domestic assault and battery with
23 a dangerous weapon, domestic assault and battery
24 resulting in great bodily injury, or domestic assault

1 and battery with a deadly weapon, as provided for in
2 Section 644 of Title 21 of the Oklahoma Statutes.
3 Such offenses shall constitute exceptions to nonviolent offenses
4 pursuant to Article VI, Section 10 of the Oklahoma Constitution.

5 SECTION 3. This act shall become effective November 1, 2023.

6 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
7 February 16, 2023 - DO PASS
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