

An Act

ENROLLED HOUSE
BILL NO. 2630

By: Echols and Hasenbeck of the
House

and

Bice of the Senate

An Act relating to domestic violence; amending 21 O.S. 2011, Section 644, as amended by Section 1, Chapter 71, O.S.L. 2014 (21 O.S. Supp. 2018, Section 644), which relates to penalties for assault and battery; modifying list of persons specified in certain criminal offenses; providing statutory reference; requiring certain defendants to complete assessment and participate in batterers' intervention program; amending 22 O.S. 2011, Section 60.1, which relates to the Protection from Domestic Abuse Act; alphabetizing list of definitions; modifying scope of certain definitions; adding definition; and providing an effective date.

SUBJECT: Domestic violence

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 644, as amended by Section 1, Chapter 71, O.S.L. 2014 (21 O.S. Supp. 2018, 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.

C. Any person who commits any assault and battery against a ~~current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship~~ intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, ~~an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant~~ shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment in the custody of the Department of Corrections for not more than four (4) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent offense.

D. 1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon ~~a current or former spouse, a present spouse of a former spouse, a parent, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship~~ an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, ~~an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant~~ with any sharp or dangerous weapon, upon conviction, is guilty of domestic assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment in the custody of the Department of Corrections not exceeding ten (10) years, or by imprisonment in a county jail not exceeding one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

2. Any person who, without such cause, shoots ~~a current or former spouse, a present spouse of a former spouse, a parent, a foster parent, a child, a person otherwise related by blood or~~

~~marriage, a person with whom the defendant is in a dating relationship~~ an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, ~~an individual with whom the defendant has a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant,~~ by means of any deadly weapon that is likely to produce death shall, upon conviction, be guilty of domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding life. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

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

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

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

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

G. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any person convicted of a second or

subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or by a fine not exceeding Seven Thousand Dollars (\$7,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall apply to any second or subsequent offense. For every conviction of a domestic abuse, domestic assault or domestic assault and battery with a dangerous weapon, or domestic assault and battery with a deadly weapon crime in violation of any provision of this section committed against an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, the court shall:

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

2. a. The court shall require the defendant to ~~participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment~~ complete an assessment and follow the recommendations of a batterers' intervention program certified by the Attorney General. If the defendant is ordered to participate in a ~~domestic abuse counseling or treatment~~ batterers' intervention program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by ~~a program counselor or a private counselor~~ staff. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered ~~domestic abuse counseling or treatment~~ batterers' intervention program shall be prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.

b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The

counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3. a. The court shall 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 and 5 of this subsection. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation for the district

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

- b. The court shall set a second review hearing after the completion of the counseling or treatment 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 shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

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

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

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

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

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

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

I. For the purposes of subsections C and G of this section, any conviction for assault and battery against ~~a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship~~ an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, ~~an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant,~~ shall constitute a sufficient basis for a felony charge:

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

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

J. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against ~~a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship~~ an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, ~~an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant~~ shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment in the custody of the Department of Corrections for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. Upon a

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

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

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

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

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

N. Any plea of guilty or finding of guilt for a violation of subsection C, F, G, I or J of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is

relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

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

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

SECTION 2. AMENDATORY 22 O.S. 2011, Section 60.1, is amended to read as follows:

Section 60.1 As used in the Protection from Domestic Abuse Act and in the Domestic Abuse Reporting Act, Sections 40.5 through 40.7 of this title and Section 150.12B of Title 74 of the Oklahoma Statutes:

1. "Dating relationship" means intimate association, primarily characterized by affectionate or sexual involvement. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;

2. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are is currently or was previously an intimate partner or family or household members or who are or were in a dating relationship member;

~~2. "Stalking" means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor child thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened,~~

~~intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:~~

- ~~a. following or appearing within the sight of that individual,~~
- ~~b. approaching or confronting that individual in a public place or on private property,~~
- ~~c. appearing at the workplace or residence of that individual,~~
- ~~d. entering onto or remaining on property owned, leased, or occupied by that individual,~~
- ~~e. contacting that individual by telephone,~~
- ~~f. sending mail or electronic communications to that individual, or~~
- ~~g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual;~~

3. "Family or household members" means:

- a. parents, including grandparents, stepparents, adoptive parents and foster parents,
- b. children, including grandchildren, stepchildren, adopted children and foster children, and
- c. persons otherwise related by blood or marriage living in the same household;

4. "Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;

5. "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is

or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes and fear of death or bodily injury;

4. ~~"Family or household members" means:~~

- a. ~~spouses,~~
- b. ~~ex-spouses,~~
- c. ~~present spouses of ex-spouses,~~
- d. ~~parents, including grandparents, stepparents, adoptive parents and foster parents,~~
- e. ~~children, including grandchildren, stepchildren, adopted children and foster children,~~
- f. ~~persons otherwise related by blood or marriage,~~
- g. ~~persons living in the same household or who formerly lived in the same household, and~~
- h. ~~persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped;~~

5. ~~"Dating relationship" means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;~~

6. ~~"Foreign protective order" means any valid order of protection issued by a court of another state or a tribal court;~~

7. "Intimate partner" means:

- a. current or former spouses,

- b. persons who are or were in a dating relationship,
- c. persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, and
- d. persons who currently or formerly lived together in an intimate way, primarily characterized by affectionate or sexual involvement. A sexual relationship may be an indicator that a person is an intimate partner, but is never a necessary condition;

7. "Mutual protective order" means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff's petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition pursuant to Section 60.4 of this title;

8. "Rape" means rape and rape by instrumentation in violation of Sections 1111 and 1111.1 of Title 21 of the Oklahoma Statutes;

~~8.~~ 9. "Stalking" means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

- a. following or appearing within the sight of that individual,
- b. approaching or confronting that individual in a public place or on private property,

- c. appearing at the workplace or residence of that individual,
- d. entering onto or remaining on property owned, leased or occupied by that individual,
- e. contacting that individual by telephone,
- f. sending mail or electronic communications to that individual, or
- g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual; and

10. "Victim support person" means a person affiliated with a ~~certified~~ domestic violence ~~or~~, sexual assault or adult human sex trafficking program, certified by the Attorney General or certified by a recognized Native American Tribe if operating mainly within operating under a tribal lands government, who provides support and assistance for a person who files a petition under the Protection from Domestic Violence Abuse Act; and

9. ~~"Mutual protective order" means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff's petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition pursuant to Section 60.4 of this title.~~

SECTION 3. This act shall become effective November 1, 2019.

Passed the House of Representatives the 11th day of March, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____