An Act

ENROLLED SENATE
BILL NO. 537

By: Pugh of the Senate

and

Boles and Roe of the House

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

SUBJECT: Domestic abuse

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

SECTION 1. AMENDATORY 21 O.S. 2021, 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 intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes 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 an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes 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 an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes 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 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 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 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 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 program staff. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered 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 an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes 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 an intimate partner or a family or household member as defined by Section 60.1 of Title 22 of the Oklahoma Statutes 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 57 O.S. 2021, Section 571, is amended to read as follows:

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

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

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

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

b. assault, battery, or assault and battery with a deadly weapon or by other means likely to produce death or great bodily harm, as provided for in Section 652 of 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 1289.16 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,

qq. using a vehicle to facilitate the discharge of a weapon pursuant to Section 652 of Title 21 of the Oklahoma Statutes,

rr. bombing offenses as defined in Section 1767.1 of Title 21 of the Oklahoma Statutes,

ss. child pornography or aggravated child pornography as defined in Section 1021.2, 1021.3, 1024.1 or 1040.12a of Title 21 of the Oklahoma Statutes,

tt. child prostitution as defined in Section 1030 of Title 21 of the Oklahoma Statutes,

uu. abuse of a vulnerable adult as defined in Section 10-103 of Title 43A of the Oklahoma Statutes,

vv. aggravated trafficking as provided for in subsection C of Section 2-415 of Title 63 of the Oklahoma Statutes,

ww. aggravated assault and battery upon any person defending another person from assault and battery, as provided for in Section 646 of Title 21 of the Oklahoma Statutes,

xx. human trafficking, as provided for in Section 748 of Title 21 of the Oklahoma Statutes,

yy. terrorism crimes as provided in Section 1268 et seq. of Title 21 of the Oklahoma Statutes,

zz. eluding a peace officer, as provided for in subsection B or C of Section 540A of Title 21 of the Oklahoma Statutes, or

aaa. domestic abuse by strangulation, domestic assault with a dangerous weapon, domestic assault and battery with a dangerous weapon, domestic assault and battery resulting in great bodily injury, or domestic assault and battery with a deadly weapon, as provided for in Section 644 of Title 21 of the Oklahoma Statutes.

Such offenses shall constitute exceptions to nonviolent offenses pursuant to Article VI, Section 10 of the Oklahoma Constitution.

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

Passed the Senate the 7th day of March, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 1st

day of May, 2023, at 2:13 o'clock p. M.

By: [illegible]

Approved by the Governor of the State of Oklahoma this 5th

day of May, 2023, at 10:40 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 5th

day of May, 2023, at 11:50 o'clock A. M.

By: [illegible]