

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3857

By: Ford

AS INTRODUCED

An Act relating to domestic abuse; amending 21 O.S. 2021, Section 644, as amended by Section 1, Chapter 212, O.S.L. 2023 (21 O.S. Supp. 2023, Section 644), which relates to assault and battery; modifying certain penalties; providing restrictions on sentences imposed; requiring persons to serve one hundred percent of sentence; prohibiting inmates from receiving earned credits; providing alternate split sentence under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 644, as amended by Section 1, Chapter 212, O.S.L. 2023 (21 O.S. Supp. 2023, Section 644), is amended to read as follows:

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

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more

1 than One Thousand Dollars (\$1,000.00), or by both such fine and  
2 imprisonment.

3 C. Any person who commits any assault and battery against a  
4 current or former intimate partner or a family or household member  
5 as defined by Section 60.1 of Title 22 of the Oklahoma Statutes  
6 shall be guilty of domestic abuse. Upon conviction, the defendant  
7 shall be punished by imprisonment in the ~~county jail for not more~~  
8 ~~than one (1) year, or by a fine not exceeding Five Thousand Dollars~~  
9 ~~(\$5,000.00), or by both such fine and imprisonment~~ custody of the  
10 Department of Corrections for a period of five (5) years. Upon  
11 conviction for a second or subsequent offense, the person shall be  
12 punished by imprisonment in the custody of the Department of  
13 Corrections for a period of not more less than four (4) five (5)  
14 years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00),  
15 or by both such fine and imprisonment nor more than ten (10) years.  
16 The provisions of Section 51.1 of this title shall apply to any  
17 second or subsequent offense.

18 D. 1. Any person who, with intent to do bodily harm and  
19 without justifiable or excusable cause, commits any assault,  
20 battery, or assault and battery upon an intimate partner or a family  
21 or household member as defined by Section 60.1 of Title 22 of the  
22 Oklahoma Statutes with any sharp or dangerous weapon, upon  
23 conviction, is guilty of domestic assault or domestic assault and  
24 battery with a dangerous weapon which shall be a felony and  
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1 punishable by imprisonment in the custody of the Department of  
2 Corrections ~~not exceeding~~ for a period of not less than five (5)  
3 years nor more than ten (10) years, ~~or by imprisonment in a county~~  
4 ~~jail not exceeding one (1) year.~~ The provisions of Section 51.1 of  
5 this title shall apply to any second or subsequent conviction for a  
6 violation of this paragraph.

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

16 E. Any person convicted of domestic abuse committed against a  
17 pregnant woman with knowledge of the pregnancy shall be guilty of a  
18 ~~misdemeanor,~~ felony punishable by imprisonment in the ~~county jail~~  
19 custody of the Department of Corrections for ~~not more than one (1)~~  
20 ~~year~~ a period of five (5) years.

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

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

8 F. Any person convicted of domestic abuse as defined in  
9 subsection C of this section that results in great bodily injury to  
10 the victim shall be guilty of a felony and punished by imprisonment  
11 in the custody of the Department of Corrections for a period of not  
12 less than five (5) years nor more than ten (10) years, ~~or by~~  
13 ~~imprisonment in the county jail for not more than one (1) year.~~ The  
14 provisions of Section 51.1 of this title shall apply to any second  
15 or subsequent conviction of a violation of this subsection.

16 G. Any person convicted of domestic abuse as defined in  
17 subsection C of this section that was committed in the presence of a  
18 child shall be punished by imprisonment in the county jail for not  
19 less than six (6) months nor more than one (1) year, or by a fine  
20 not exceeding Five Thousand Dollars (\$5,000.00), or by both such  
21 fine and imprisonment. Any person convicted of a second or  
22 subsequent domestic abuse as defined in subsection C of this section  
23 that was committed in the presence of a child shall be punished by  
24 imprisonment in the custody of the Department of Corrections for not  
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1 less than one (1) year nor more than five (5) years, or by a fine  
2 not exceeding Seven Thousand Dollars (\$7,000.00), or by both such  
3 fine and imprisonment. The provisions of Section 51.1 of this title  
4 shall apply to any second or subsequent offense. For every  
5 conviction of a domestic abuse crime in violation of any provision  
6 of this section committed against an intimate partner or a family or  
7 household member as defined by Section 60.1 of Title 22 of the  
8 Oklahoma Statutes, the court shall:

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

13 2. a. The court shall require the defendant to complete an  
14 assessment and follow the recommendations of a  
15 batterers' intervention program certified by the  
16 Attorney General. If the defendant is ordered to  
17 participate in a batterers' intervention program, the  
18 order shall require the defendant to attend the  
19 program for a minimum of fifty-two (52) weeks,  
20 complete the program, and be evaluated before and  
21 after attendance of the program by program staff.  
22 Three unexcused absences in succession or seven  
23 unexcused absences in a period of fifty-two (52) weeks  
24 from any court-ordered batterers' intervention program

1 shall be prima facie evidence of the violation of the  
2 conditions of probation for the district attorney to  
3 seek acceleration or revocation of any probation  
4 entered by the court.

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

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

1 unexcused absences in succession or seven unexcused  
2 absences in a period of fifty-two (52) weeks from any  
3 court-ordered domestic abuse counseling or treatment  
4 program shall be prima facie evidence of the violation  
5 of the conditions of probation for the district  
6 attorney to seek acceleration or revocation of any  
7 probation entered by the court.

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

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

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

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

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

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

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

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

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

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

15 J. Any person who commits any assault and battery by  
16 strangulation or attempted strangulation against an intimate partner  
17 or a family or household member as defined by Section 60.1 of Title  
18 22 of the Oklahoma Statutes shall, upon conviction, be guilty of  
19 domestic abuse by strangulation and shall be punished by  
20 imprisonment in the custody of the Department of Corrections for a  
21 period of ~~not less than one (1) year nor more than three (3)~~ five  
22 (5) years, ~~or by a fine of not more than Three Thousand Dollars~~  
23 ~~(\$3,000.00), or by both such fine and imprisonment.~~ Upon a second  
24 or subsequent conviction for a violation of this section, the  
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1 defendant shall be punished by imprisonment in the custody of the  
2 Department of Corrections for a period of not less than ~~three (3)~~  
3 five (5) years nor more than ten (10) years, ~~or by a fine of not~~  
4 ~~more than Twenty Thousand Dollars (\$20,000.00), or by both such fine~~  
5 ~~and imprisonment.~~ The provisions of Section 51.1 of this title  
6 shall apply to any second or subsequent conviction of a violation of  
7 this subsection. As used in this subsection, "strangulation" means  
8 any form of asphyxia; including, but not limited to, asphyxia  
9 characterized by closure of the blood vessels or air passages of the  
10 neck as a result of external pressure on the neck or the closure of  
11 the nostrils or mouth as a result of external pressure on the head.

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

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

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

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

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

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

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

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

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

5 Q. Persons convicted under the provisions of subsections C, D,  
6 E, F, and J of this section:

7 1. Shall not be eligible for probation, suspended, or deferred  
8 sentence;

9 2. Shall be required to serve not less than one hundred percent  
10 (100%) of any sentence of imprisonment imposed; and

11 3. Shall not be eligible for earned credits or any other type  
12 of credits which have the effect of reducing the length of the  
13 sentence to less than one hundred percent (100%) of the sentence  
14 imposed.

15 Provided, however, after serving one (1) year of the sentence of  
16 imprisonment, the person may participate in a batterers'  
17 intervention program for a minimum of fifty-two (52) weeks. Upon  
18 successful completion of the batterers' intervention program, the  
19 person shall be eligible for immediate release from incarceration  
20 and the remainder of his or her sentence, subject to such conditions  
21 as the court may prescribe, shall be suspended. The court shall  
22 have the authority to revoke, accelerate, or modify the sentence if  
23 any condition of the order issued by the court is violated or the  
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1 person is convicted of a felony or misdemeanor offense while serving  
2 his or her suspended sentence.

3 SECTION 2. This act shall become effective November 1, 2024.  
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