

Cherokee Nation Code Annotated
Title 21: Crimes and Punishments
Part III. Crimes Against the Person
Chapter 20: Assault and Battery
§ 644. Assault or assault and battery—Punishment

Cite as: 21 CNCA § 644

A. Assault shall be punishable by imprisonment for a term 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 for a term not exceeding six (6) months, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine.

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 22 CNCA § 60.1 shall be guilty of domestic abuse. Upon conviction, the defendant shall be guilty of a misdemeanor and punished by imprisonment 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 guilty of a felony and punished by imprisonment for not more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment. The provisions of Section 51 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 22 CNCA § 60.1 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 22 CNCA § 60.1 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 for not more than one (1) year.

F. 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 for not more than three (3) years.

G. 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 for not more than three (3) years.

H. 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 for not more than three (3) years. The provisions of Section 51 of this title shall apply to any second or subsequent conviction of a violation of this subsection.

I. 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 guilty of a misdemeanor and punished by imprisonment 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 guilty of a felony and punished by imprisonment for not less than one (1) year nor more than three (3) years, or by a fine not exceeding Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment.

The provisions of Section 51 of this title shall apply to any second or subsequent offense.

J. For every conviction of any provision of this section, the court shall:

1. Specifically order as a condition of a suspended 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 program. If the defendant is ordered to participate in a domestic abuse counseling or treatment 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. 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.

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;

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

K. 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.

L. 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 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 if that conviction is rendered in any court of record.

M. Any plea of guilty or nolo contendere or a finding of guilt for a violation of any subsection 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.

N. For purposes of subsection G 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.

Historical Data

LA 10-90, eff. November 13, 1990. Amended LA 28-20, eff. December 14, 2020. Amended LA 19-21, eff. May 17, 2021.