

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1318

By: Nichols

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; authorizing
8 courts to impose alternative sentence under certain
9 circumstances; directing court to consider evidence
10 of abuse and other relevant factors; providing
11 sentencing guidelines; allowing certain incarcerated
12 persons to apply for sentence modification;
13 establishing procedures for submitting application;
14 directing courts to send notification to applicant
15 upon certain finding; allowing applicants to request
16 an attorney for assistance; providing for the
17 dismissal of applications; providing for notification
18 to district attorneys; authorizing transfer of
19 eligible applications to original sentencing court;
20 establishing evidentiary requirements for applicants;
21 providing for the dismissal of applications upon
22 certain finding; providing hearing procedures for
23 eligible applicants; prohibiting courts from ordering
24 new presentence investigations or reports; allowing
courts to consider penal institution records;
providing procedures for denying applications;
requiring notification to eligible applicants of
sentence modification; providing for appeals under
certain circumstances; establishing appeal
procedures; providing credits for time served in jail
or prison when determining new sentence; providing
for codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 986 of Title 22, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Upon a determination by the court following a hearing that:

5 1. The defendant was the victim of physical, sexual or
6 psychological abuse by the victim or intended victim of such
7 offense;

8 2. Such abuse was a significant contributing factor in causing
9 the defendant to commit such offense; and

10 3. The victim or intended victim of such offense was a member
11 of the same family or household, as such term is defined in Section
12 60.1 of Title 22 of the Oklahoma Statutes, as the defendant,
13 the court may, in lieu of imposing the original sentence, impose a
14 sentence of imprisonment in accordance with subsection D of this
15 section.

16 B. The court may determine that such abuse constitutes a
17 significant contributing factor pursuant to paragraph 2 of
18 subsection A of this section regardless of whether the defendant
19 raised this as a defense.

20 C. At the hearing to determine whether the defendant should be
21 sentenced pursuant to this section, the court shall consider oral
22 and written arguments, take testimony from witnesses offered by
23 either party and consider relevant evidence to assist in making its
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1 determination. Reliable hearsay evidence shall be admissible at
2 such hearings.

3 D. The court shall have the authority to sentence the defendant
4 to one-half of the maximum term imposed for the original sentence.
5 The modified sentence shall be specified in the judgment and
6 sentence.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 986.1 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Any person confined in a penal institution operated by the
11 Department of Corrections who is:

12 1. Serving a sentence with a minimum term of ten (10) years or
13 more for an offense committed prior to the effective date of this
14 act; and

15 2. Eligible for a modified sentence pursuant to Section 1 of
16 this act,
17 may submit to the judge who imposed the original sentence a request
18 to apply for a modified sentence in accordance with Section 1 of
19 this act. The person must include in the request documentation that
20 he or she is confined in a penal institution operated by the
21 Department of Corrections and that the person is serving a sentence
22 with a minimum term of ten (10) years or more for an offense
23 committed prior to the effective date of this act. The person must
24 also provide documentation that he or she is serving such sentence

1 for an offense that is eligible for a modified sentence under
2 Section 1 of this act.

3 B. 1. If the court finds that the person has met the
4 requirements to apply for a modified sentence pursuant to subsection
5 A of this section, the court shall notify the person that he or she
6 may submit an application for a modified sentence. Upon such
7 notification, the person may request that the court assign him or
8 her an attorney for the preparation of the application and
9 proceedings for resentencing pursuant to this section.

10 2. If the court finds that the person has not met the
11 requirements to apply for a modified sentence pursuant to subsection
12 A of this section, the court shall notify the person and dismiss his
13 or her request without prejudice.

14 C. Upon receipt of an application for a modified sentence, the
15 court shall promptly notify the appropriate district attorney and
16 provide such district attorney with a copy of the application. If
17 the court that received the application is not the original
18 sentencing court, the application may be referred to the original
19 sentencing court.

20 D. An application for a modified sentence pursuant to this
21 section shall include at least two pieces of evidence corroborating
22 the claim of the applicant that he or she was, at the time of the
23 offense, a victim of domestic violence subjected to substantial
24 physical, sexual or psychological abuse inflicted by a member of the

1 same family or household, as such term is defined in Section 60.1 of
2 Title 22 of the Oklahoma Statutes, as the applicant. At least one
3 piece of evidence must be either a court record, presentence report,
4 social services record, hospital record, sworn statement from a
5 witness to the domestic violence, law enforcement record, domestic
6 incident report or order of protection. Other evidence may include,
7 but shall not be limited to:

8 1. Department of Corrections records;

9 2. Documentation prepared at or near the time of the commission
10 of the offense or the prosecution thereof that supports the claim of
11 the applicant; or

12 3. Verification of consultation with a licensed medical or
13 mental health care provider, employee of a court acting within the
14 scope of his or her employment, member of the clergy, attorney,
15 social worker or rape crisis counselor or other advocate acting on
16 behalf of an agency that assists victims of domestic violence for
17 the purpose of assisting such person with domestic violence victim
18 counseling or support.

19 E. If the court finds that the applicant has not complied with
20 the provisions of subsection D of this section, the court shall
21 dismiss the application without prejudice.

22 F. If the court finds that the applicant has complied with the
23 provisions of subsection D of this section, the court shall conduct
24 a hearing to aid in making its determination of whether the

1 applicant should have his or her sentence modified in accordance
2 with Section 1 of this act.

3 G. At such hearing, the court shall determine any controverted
4 issue of fact relevant to the issue of sentencing. Reliable hearsay
5 evidence shall be admissible at such hearings. The court may
6 consider any facts or circumstances relevant to the imposition of a
7 modified sentence submitted by the applicant or the district
8 attorney and may, in addition, consider the institutional record of
9 confinement of the applicant. The court shall not order a new
10 presentence investigation and report or entertain any matter
11 challenging the underlying basis of the subject conviction. The
12 consideration by the court of the institutional record of
13 confinement of such applicant shall include, but not be limited to:

14 1. Participation in or willingness by the applicant to
15 participate in programming such as domestic violence, parenting and
16 substance abuse treatment while incarcerated; and

17 2. The disciplinary history of the applicant.

18 The fact that the applicant may have been unable to participate in
19 treatment or other programming while incarcerated despite the
20 willingness of the applicant to do so shall not be considered a
21 negative factor in determining a motion pursuant to this section.

22 H. If the court determines that the applicant should not have
23 his or her sentence modified in accordance with Section 1 of this
24 act, the court shall inform the applicant of its decision and shall

1 enter an order to that effect. Any order issued by a court pursuant
2 to this section must include written findings of fact and the
3 reasons for such order.

4 I. If the court determines that the applicant should have his
5 or her sentence modified in accordance with Section 1 of this act,
6 the court shall notify the applicant that, unless he or she
7 withdraws the application or appeals from such order, the court will
8 enter an order vacating the sentence originally imposed and impose a
9 new sentence as authorized by Section 1 of this act. Any order
10 issued by a court pursuant to this subsection shall include written
11 findings of fact and the reasons for such order.

12 J. 1. An appeal may be taken as of right in accordance with
13 applicable provisions of Chapter 18 of Title 22 of the Oklahoma
14 Statutes from:

- 15 a. an order denying resentencing, or
- 16 b. a new sentence imposed under this section.

17 2. The appeal may be based on the grounds that:

- 18 a. the term of the new sentence is harsh or excessive, or
- 19 b. the term of the new sentence is unauthorized as a
20 matter of law.

21 K. An appeal in accordance with the applicable provisions of
22 Chapter 18 of Title 22 of the Oklahoma Statutes may also be taken as
23 of right by the applicant from an order specifying and informing the
24 applicant of the term of the modified sentence the court would

1 impose upon resentencing on grounds that the term of the modified
2 sentence is harsh or excessive. Upon remand to the sentencing court
3 following such appeal, the applicant shall be given an opportunity
4 to withdraw an application for modified sentencing before any new
5 sentence is imposed. The applicant may request that the court
6 assign him or her an attorney for the preparation of the appeal and
7 any proceedings regarding his or her application for a modified
8 sentence.

9 L. In calculating the new sentence to be served by the
10 applicant, the applicant shall be credited for any jail time
11 credited towards the subject conviction as well as any period of
12 incarceration credited toward the sentence originally imposed.

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

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