

1 **SENATE FLOOR VERSION**

2 February 13, 2024

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1470

6 By: Treat

7 An Act relating to sentencing; creating the Oklahoma
8 Survivors' Act; providing short title; defining
9 terms; directing courts to consider certain
10 mitigating factors during sentencing and pleas;
11 requiring defendants to provide certain evidence;
12 allowing courts discretion to depart from applicable
13 sentences; authorizing courts to impose lesser
14 sentences under certain circumstances; providing for
15 the introduction of certain arguments and testimony;
16 allowing defendants with certain sentences to request
17 an application for resentencing; requiring inclusion
18 of certain information when making request; providing
19 jurisdictional requirements; providing notice
20 procedures when granting or denying requests;
21 allowing defendants to request the appointment of
22 counsel; directing court clerks to send notification
23 to the appropriate district attorney; requiring the
24 inclusion of certain evidence with applications;
providing for denial of applications; establishing
hearing procedures upon approval of applications;
providing notice procedures for orders issued by the
court; providing for the appeal of orders; allowing
applicants to request the appointment of counsel;
requiring time served to be credited toward 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 1090.1 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma
5 Survivors' Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1090.2 of Title 22, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "Domestic violence" means any act of physical harm or the
11 threat of imminent physical harm which is committed by an adult,
12 emancipated minor, or minor child thirteen (13) years of age or
13 older against another adult, emancipated minor, or minor child who
14 is currently or was previously an intimate partner or family or
15 household member;

16 2. "Physical abuse" means any real or threatened physical
17 injury or damage to the body that is not accidental;

18 3. "Post-traumatic stress disorder" means the same as such term
19 is defined in the Diagnostic and Statistical Manual of Mental
20 Disorders, Fifth Edition (DSM-5, 2013), and occurred as a result of
21 the victimization of a survivor related to the violence or abuse;

22 4. "Psychological abuse" means a pattern of real or threatened
23 mental intimidation, threats, coercive control, economic or
24 financial control, and humiliation that provokes fear of harm; and

1 5. "Sentencing hearing" means a postconviction hearing in which
2 the defendant is brought before the court for imposition of a
3 sentence.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1090.3 of Title 22, unless there
6 is created a duplication in numbering, reads as follows:

7 A. During a hearing to:

8 1. Sentence a person; or

9 2. Accept a plea of guilty,

10 for a person who is a survivor of domestic violence and has been
11 charged with a crime, the court shall consider as a mitigating
12 factor that the person has been abused physically, sexually, or
13 psychologically by the person's sexual partner, family member or
14 member of the household, the trafficker of the person, or other
15 individual who used the person for financial gain.

16 B. The defendant shall provide to the court evidence including
17 but not limited to:

18 1. Documentary evidence corroborating that the defendant was,
19 at the time of the offense, a victim of domestic violence; and

20 2. At least one piece of documentary evidence that is a court
21 record, presentence report, social services record, hospital record,
22 sworn statement from a witness to the domestic violence or abuse who
23 is not the defendant, law enforcement record, domestic incident
24 report, or protective order.

1 Other evidence may include but not be limited to local jail
2 records or records of the Department of Corrections, documentation
3 prepared at or near the time of the commission or prosecution of the
4 offense tending to support the claims of the defendant, or
5 verification of consultation with a licensed medical care provider
6 or mental health care provider, employee of a court acting within
7 the scope of his or her employment, member of the clergy, attorney,
8 social worker, rape crisis counselor, or other advocate acting on
9 behalf of an agency that assists victims of domestic violence or
10 abuse. Expert testimony from a psychiatrist, psychologist, or
11 mental health professional showing that the defendant has been
12 diagnosed with post-traumatic stress disorder as a result of the
13 violence or abuse at issue may also be submitted to the court as
14 evidence.

15 C. If the court finds by a preponderance of the evidence that
16 at the time of the offense the defendant was a survivor of domestic
17 violence or subjected to physical, sexual, or psychological abuse
18 inflicted by a sexual partner, a family member or member of the
19 household, the trafficker of the defendant, or any person who used
20 the defendant for financial gain, and that the violence or abuse was
21 a substantial contributing factor in causing the defendant to commit
22 the offense or to the defendant's criminal behavior, the court shall
23 depart from the applicable sentence to the ranges provided as
24 follows:

- 1 1. Sentences of life without the possibility of parole shall be
2 reduced to thirty (30) years or less;
 - 3 2. Sentences of life with the possibility of parole shall be
4 reduced to twenty-five (25) years or less;
 - 5 3. Sentences of thirty (30) years or more shall be reduced to
6 twenty (20) years or less;
 - 7 4. Sentences of twenty (20) years or more shall be reduced to
8 fifteen (15) years or less;
 - 9 5. Sentences of fifteen (15) years or more shall be reduced to
10 seven and one-half (7 1/2) years or less; and
 - 11 6. Sentences of eight (8) years or more shall be reduced to
12 five (5) years or less.
- 13 D. The provisions of this section shall not apply to a person
14 convicted of:
- 15 1. An offense that would require the person to register as a
16 sex offender;
 - 17 2. An attempt or conspiracy to commit an offense that would
18 require the person to register as a sex offender;
 - 19 3. An offense specified in subsection A of Section 843.3 of
20 Title 21 of the Oklahoma Statutes;
 - 21 4. An offense specified in subsection A of Section 843.5 of
22 Title 21 of the Oklahoma Statutes; or
 - 23 5. An offense for which the person has received a sentence of
24 death.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1090.4 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Where a court has imposed a criminal judgment and sentence
5 upon a defendant other than for an offense described in subsection D
6 of Section 3 of this act and the defendant is serving the sentence
7 in the custody of the Department of Corrections, the court shall
8 impose a new, lesser sentence following a hearing if the court
9 determines:

10 1. At the time of the offense for which the sentence is being
11 served, the defendant was a victim of domestic violence or subjected
12 to physical, sexual, or psychological abuse inflicted by a sexual
13 partner, a family member or member of the household, the trafficker
14 of the defendant, or any person who used the defendant for financial
15 gain; and

16 2. Such violence or abuse was a significant contributing factor
17 in causing the defendant to commit the offense for which he or she
18 is presently in custody or to the defendant's criminal behavior.

19 At the hearing to determine whether the defendant should be
20 resentenced pursuant to this section, the court shall take testimony
21 from witnesses offered by either party and consider oral and written
22 arguments and any other relevant evidence to assist in making its
23 determination. The court may determine that such violence or abuse

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1 constituted a significant contributing factor to the offense
2 regardless of whether the defendant raised an affirmative defense.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1090.5 of Title 22, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any person who is:

7 1. Confined in an institution under the custody and control of
8 the Department of Corrections;

9 2. Serving a sentence for an offense committed prior to the
10 effective date of this act; and

11 3. Eligible for an alternative sentence pursuant to the
12 provisions of Section 3 of this act,

13 may, on or after the effective date of this act, submit to the judge
14 who imposed the original sentence a request to apply for

15 resentencing in accordance with the provisions of Section 3 of this
16 act. The person shall include in the request documentation showing

17 that he or she is confined in an institution under the custody and

18 control of the Department of Corrections and is serving a sentence

19 for an offense committed prior to the effective date of this act.

20 The person shall also declare that he or she is eligible for an

21 alternative sentence under the provisions of Section 3 of this act.

22 B. If the original sentencing judge is not serving on the court
23 in which the original sentence was imposed at the time of the

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1 request to apply for resentencing, the request shall be randomly
2 assigned to a judge of the original sentencing court.

3 C. 1. If the court finds that the person has met the
4 requirements to apply for resentencing as provided in subsection A
5 of this section, the court shall provide notice to the person that
6 he or she may submit an application for resentencing. Upon such
7 notification, the person may request the court appoint an attorney
8 to assist the person in the preparation of and proceedings on the
9 application for resentencing.

10 2. If the court finds that such person has not met the
11 requirements to apply for resentencing as provided for in subsection
12 A of this section, the court shall notify the person and deny his or
13 her request without prejudice.

14 D. Upon the receipt of an application for resentencing, the
15 court clerk shall promptly notify the appropriate district attorney
16 and provide such district attorney with a copy of the application.

17 E. If the judge that receives the application is not the judge
18 who originally sentenced the applicant, the application may be
19 referred to the original sentencing judge if he or she is serving as
20 a judge of a court of competent jurisdiction and the applicant and
21 the district attorney agree that the application should be referred.

22 F. An application for resentencing pursuant to this section
23 shall include evidence corroborating the claim of the applicant that
24 he or she was a victim of domestic violence or subjected to

1 physical, sexual, or psychological abuse inflicted by a sexual
2 partner, a family member or member of the household, the trafficker
3 of the applicant, or any person who used the applicant for financial
4 gain. At least one piece of evidence shall be a court record,
5 presentence report, social services record, hospital record, sworn
6 statement from a witness to the domestic violence who is not the
7 applicant, law enforcement record, domestic incident report, or
8 protective order. Other evidence may include but not be limited to
9 local jail records or records of the Department of Corrections,
10 documentation prepared at or near the time of the commission or
11 prosecution of the offense tending to support the claims of the
12 applicant, or verification of consultation with a licensed medical
13 care provider or mental health care provider, employee of a court
14 acting within the scope of his or her employment, member of the
15 clergy, attorney, social worker, rape crisis counselor, or other
16 advocate acting on behalf of an agency that assists victims of
17 domestic violence or abuse. Expert testimony from a psychiatrist,
18 psychologist, or mental health professional showing that the
19 applicant has been diagnosed with post-traumatic stress disorder may
20 also be submitted to the court.

21 G. 1. If the court finds that the applicant has not complied
22 with the provisions of subsection F of this section, the court shall
23 deny the application without prejudice.

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1 2. If the court finds that the applicant has complied with the
2 provisions of subsection F of this section, the court shall conduct
3 a sentencing hearing to aid in making its determination of whether
4 the applicant should be resentenced in accordance with Section 3 of
5 this act. At the hearing, the court shall determine any
6 controverted issues of fact relevant to the issue of sentencing.
7 The court may consider any facts or circumstances relevant to the
8 imposition of a new sentence submitted by the applicant or the
9 district attorney and may consider the institutional record of
10 confinement of such person; provided, however, the institutional
11 record shall not be solely dispositive as to whether an applicant
12 receives a reduced sentence. The court shall not order a new
13 presentence investigation and report or entertain any matter
14 challenging the underlying basis of the subject conviction.
15 Consideration of the institutional record of confinement of an
16 applicant by the court shall include but not be limited to the
17 participation of the applicant in programming such as domestic
18 violence, parenting, and substance abuse treatment while
19 incarcerated and the disciplinary history of the applicant. The
20 inability of the applicant to participate in treatment or other
21 programming while incarcerated despite the willingness of the
22 applicant to do so shall not be considered a negative factor when
23 the court is making its determination.

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1 H. If the court determines that the applicant should not be
2 resentenced in accordance with Section 3 of this act, the court
3 shall inform such applicant of its decision and shall enter an order
4 to that effect. Any order issued by a court pursuant to this
5 subsection shall include written findings of fact and the reasons
6 for such order. If the applicant is denied on the merits of the
7 application, the court shall deny the application with prejudice.

8 I. If the court determines that the applicant should be
9 resentenced in accordance with Section 3 of this act, the court
10 shall notify the applicant that, unless he or she withdraws the
11 application for resentencing or appeals the order of the court, the
12 court shall enter an order vacating the sentence originally imposed
13 and shall impose a new sentence as set forth in Section 3 of this
14 act. Any order issued by a court pursuant to this subsection shall
15 include written findings of fact and the reasons for such order.
16 Sentences modified pursuant to the provisions of this section shall
17 be reduced as set forth in subsection C of Section 3 of this act.

18 J. An appeal to the Court of Criminal Appeals may be taken as
19 of right in accordance with the applicable provisions provided for
20 in Title 22 of the Oklahoma Statutes from:

- 21 1. An order denying resentencing; or
- 22 2. A new sentence imposed under the provisions of this section.

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1 The applicant may request that the Court of Criminal Appeals assign
2 an attorney to the applicant for the preparation of and proceedings
3 for any appeal regarding the application for resentencing.

4 K. When calculating the new sentence to be served by the
5 applicant pursuant to Section 3 of this act, the applicant shall be
6 credited for any time served in the county jail and any period of
7 incarceration served under the custody and control of the Department
8 of Corrections toward the sentence originally imposed.

9 SECTION 6. This act shall become effective November 1, 2024.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
11 February 13, 2024 - DO PASS AS AMENDED BY CS

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