

An Act

ENROLLED SENATE
BILL NO. 1835

By: Treat and Gollihare of the
Senate

and

Echols, Deck, McDugle,
Nichols, Roberts, Williams,
Munson, Wolfley, Goodwin,
Rosecrants, Swope,
Provenzano, Fugate,
Waldron, Schreiber, and
Steagall of the House

An Act relating to sentencing; creating the Oklahoma Survivors' Act; providing short title; defining terms; directing courts to consider certain mitigating factors during sentencing and pleas; requiring defendants to provide certain evidence; allowing courts the discretion to depart from applicable sentences; authorizing courts to impose lesser sentences under certain circumstances; providing for the introduction of certain arguments and testimony; allowing defendants with certain sentences to request an application for resentencing; requiring inclusion of specific information when making request; providing jurisdictional requirements; providing notice procedures when granting or denying requests; allowing defendants to request the appointment of counsel; directing court clerks to send notification to the appropriate district attorney; requiring the 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; authorizing district attorneys to file motions to vacate judgment of

convictions under certain circumstances; granting jurisdiction to district courts to consider motions; and providing for codification.

Subject: Sentencing

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1090.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

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

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

As used in this act:

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

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

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

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

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

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

A. During a hearing to:

1. Sentence a person; or

2. Accept a plea of guilty,

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

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

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

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

Other evidence may include, but not be limited to, local jail records or records of the Department of Corrections, documentation prepared at or near the time of the commission or prosecution of the offense tending to support the claims of the defendant, or verification of consultation with a licensed medical care provider or mental health care provider, employee of a court acting within the scope of his or her employment, member of the clergy, attorney, social worker, rape crisis counselor, or other advocate acting on behalf of an agency that assists victims of domestic violence or

abuse. Expert testimony from a psychiatrist, psychologist, or mental health professional showing that the defendant has been diagnosed with post-traumatic stress disorder as a result of the violence or abuse at issue may also be submitted to the court as evidence.

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

1. Sentences of life without the possibility of parole shall be reduced to thirty (30) years or less;

2. Sentences of life with the possibility of parole shall be reduced to twenty-five (25) years or less;

3. Sentences of thirty (30) years or more shall be reduced to twenty (20) years or less;

4. Sentences of twenty (20) years or more shall be reduced to fifteen (15) years or less;

5. Sentences of fifteen (15) years or more shall be reduced to seven and one-half (7 1/2) years or less; and

6. Sentences of eight (8) years or more shall be reduced to five (5) years or less.

D. If the offense is one listed in Section 571 of Title 57 of the Oklahoma Statutes, the defendant must prove by clear and convincing evidence that either the victim was the perpetrator of the domestic violence, physical, sexual, or psychological abuse by a sexual partner, a family or household member, the trafficker of the defendant, or a person who used the defendant for financial gain, or the offense was coerced by the perpetrator.

E. The provisions of this section shall not apply to a person convicted of:

1. An offense that would require the person to register as a sex offender;

2. An attempt or conspiracy to commit an offense that would require the person to register as a sex offender;

3. An offense specified in subsection A of Section 843.3 of Title 21 of the Oklahoma Statutes;

4. An offense specified in subsection A of Section 843.5 of Title 21 of the Oklahoma Statutes; or

5. An offense for which the person has received a sentence of death.

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

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

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

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

At the hearing to determine whether the defendant should be resentenced pursuant to this section, the court shall take testimony from witnesses offered by either party and consider oral and written arguments and any other relevant evidence to assist in making its determination. The court may determine that such violence or abuse was related to and was a substantial contributing factor to the offense regardless of whether the defendant raised an affirmative defense.

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

A. Any person who is:

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

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

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

may, on or after the effective date of this act, submit to the judge who imposed the original sentence a request to apply for resentencing in accordance with the provisions of Section 3 of this act. The person shall include in the request documentation showing that he or she is confined in an institution under the custody and control of the Department of Corrections and is serving a sentence for an offense committed prior to the effective date of this act. The person shall also declare that he or she is eligible for an alternative sentence under the provisions of Section 3 of this act.

B. If the original sentencing judge is not serving on the court in which the original sentence was imposed at the time of the request to apply for resentencing, the request shall be randomly assigned to a judge of the original sentencing court.

C. 1. If the court finds that the person has met the requirements to apply for resentencing as provided in subsection A of this section, the court shall provide notice to the person that

he or she may submit an application for resentencing. Upon such notification, the person may request the court appoint an attorney to assist the person in the preparation of and proceedings on the application for resentencing.

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

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

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

F. An application for resentencing pursuant to this section shall include evidence corroborating the claim of the applicant that he or she was a victim of domestic violence or subjected to physical, sexual, or psychological abuse inflicted by a sexual partner, a family member or member of the household, the trafficker of the applicant, or any person who used the applicant for financial gain. At least one piece of evidence shall be a court record, presentence report, social services record, hospital record, sworn statement from a witness to the domestic violence who is not the applicant, law enforcement record, domestic incident report, or protective order. Other evidence may include but not be limited to local jail records or records of the Department of Corrections, documentation prepared at or near the time of the commission or prosecution of the offense tending to support the claims of the applicant, or verification of consultation with a licensed medical care provider or mental health care provider, employee of a court acting within the scope of his or her employment, member of the clergy, attorney, social worker, rape crisis counselor, or other advocate acting on behalf of an agency that assists victims of domestic violence or abuse. Expert testimony from a psychiatrist, psychologist, or mental health professional showing that the

applicant has been diagnosed with post-traumatic stress disorder may also be submitted to the court.

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

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

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

I. If the court determines that the applicant should be resentenced in accordance with Section 3 of this act, the court shall notify the applicant that, unless he or she withdraws the

application for resentencing or appeals the order of the court, the court shall enter an order vacating the sentence originally imposed and shall impose a new sentence as set forth in Section 3 of this act. Any order issued by a court pursuant to this subsection shall include written findings of fact and the reasons for such order. Sentences modified pursuant to the provisions of this section shall be reduced as set forth in subsection C of Section 3 of this act.

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

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

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

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

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1381 of Title 22, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law concerning postconviction relief, a district attorney in the jurisdiction in which a person was convicted of an offense may file a motion in the district court to vacate or set aside a judgment of conviction at any time if clear and convincing evidence exists establishing that the defendant was convicted of an offense that the defendant did not commit. The district court shall have jurisdiction and authority to consider, hear, and decide the motion.

Passed the Senate the 16th day of May, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of May, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____