

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1639 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Toni Hasenbeck _____

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1639

By: Hasenbeck

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8 PROPOSED COMMITTEE SUBSTITUTE

9 An Act relating to sentencing; creating the Oklahoma
10 Domestic Abuse Survivorship Act; defining terms;
11 directing courts to consider certain mitigating
12 factors during sentencing and pleas; requiring
13 defendants to provide certain documentary evidence;
14 providing sentencing ranges upon finding by the
15 court; requiring the administration of an evaluation;
16 authorizing submission of results to the defendant
17 and the court; assigning responsibility of cost of
18 evaluations; allowing certain persons to make
19 application for sentencing relief; authorizing the
20 Court of Criminal Appeals to develop and disseminate
21 standard application form; stating absence of a
22 limitation period when applying for relief; providing
23 guidelines for when persons may apply for relief;
24 providing procedures for filing applications; stating
types of documentary evidence necessary for
consideration; providing for the filing of
applications without costs under certain
circumstances; allowing the state to object upon
showing of certain evidence; providing for the
dismissal of applications; authorizing courts to
grant leave to file amendment applications;
authorizing courts to grant certain motion; providing
for sentencing review hearings; stating procedures
for hearings; providing sentencing ranges upon
finding by the court; providing procedures for
amending judgment and sentences; establishing
restrictions on subsequent applications; allowing
amended judgment and sentences to be appealed;

1 stating requirement for appeals; providing for
2 codification; and providing an effective date.

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

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1090 of Title 22, unless there
8 is created a duplication in numbering, reads as follows:

9 Sections 1 through 12 of this act shall be known and may be
10 cited as the "Oklahoma Domestic Abuse Survivorship Act".

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1090.1 of Title 22, unless there
13 is created a duplication in numbering, reads as follows:

14 As used in this act:

15 1. "Conditional release" means a type of release from custody
16 that is not parole but which must comply with conditions such as
17 electronic monitoring;

18 2. "Deferred sentence" is a type of sentence that occurs upon a
19 verdict or plea of guilty or a plea of nolo contendere, but before a
20 judgment of guilt, the court may, without entering a judgment of
21 guilt and with the consent of the defendant, defer further
22 proceedings upon the specific conditions prescribed by the court not
23 to exceed a seven-year period;

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

7 4. "Parole" means a conditional release of an offender who has
8 served part of the term for which he or she was sentenced to prison;

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

11 6. "Post-traumatic stress disorder" means the same as such term
12 is defined in the Diagnostic and Statistical Manual of Mental
13 Disorders, Fifth Edition (DSM-5, 2013), and occurred as a result of
14 the victimization of a survivor;

15 7. "Psychological abuse" means a pattern of real or threatened
16 mental intimidation, threats, coercive control, and humiliation that
17 is intended to provoke fear of harm; and

18 8. "Revocation hearing" means a hearing before the court to
19 determine whether the suspended sentence of a person shall be
20 revoked due to the commission of a new crime or a rule violation;

21 9. "Sentencing hearing" means a postconviction hearing in which
22 the defendant is brought before the court for imposition of the
23 sentence; and

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1 10. "Suspended sentence" means a type of sentence wherein the
2 court suspends the execution of the sentence in whole or in part,
3 and with or without probation.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1090.2 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 abuse, and has been
11 charged with the crime of homicide of his or her intimate partner,
12 the court shall consider as a mitigating factor that the person has
13 been abused physically, sexually, economically, or psychologically.

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

16 1. Documentary evidence, corroborating that the defendant was,
17 at the time of the offense or within one year prior to the
18 commission of the offense, a victim of domestic abuse, as such term
19 is defined in Section 2 of this act; and

20 2. At least one piece of evidence that shall be a court record,
21 presentence report, social services record, hospital record, sworn
22 statement from a witness to the domestic violence, law enforcement
23 record, domestic incident report, or order of protection.

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

14 C. If the court finds by a preponderance of the evidence that
15 the defendant is a survivor of domestic abuse, then the sentencing
16 range for the defendant shall be as follows:

17 1. If the offense carries up to five (5) years, not more than
18 three (3) years;

19 2. If the offense carries up to ten (10) years, not more than
20 five (5) years; or

21 3. If the offense carries up to twenty (20) years, not more
22 than seven (7) years.

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1 No matter the range for the offense, a defendant providing
2 mitigation evidence under this section shall not receive a sentence
3 longer than ten (10) years.

4 D. Prior to sentencing a person pursuant to the provisions of
5 this act, a psychological or psychiatric evaluation approved by the
6 Department of Mental Health and Substance Abuse Services shall be
7 administered to the defendant. The results of the evaluation shall
8 be forwarded to the defendant and may be submitted to the court as
9 evidence. It shall be the responsibility of the defendant to bear
10 the cost of the evaluation.

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

14 A. Any person who has been convicted or received a sentence for
15 homicide of his or her intimate partner and who claims:

16 1. That he or she was a victim of domestic abuse, as defined in
17 Section 2 of this act, at the time of the criminal offense or within
18 one (1) year leading up to the criminal offense;

19 2. That the aforementioned domestic abuse was substantially
20 related to the commission of the offense; and

21 3. That the sentence previously imposed does not serve the
22 means of justice when considering the mitigating evidence of
23 physical, sexual, or psychological abuse,

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1 may make application to the court in which the judgment and sentence
2 of the person was imposed. Upon receiving the application, the
3 court shall institute a proceeding to secure the appropriate
4 sentencing relief. The Court of Criminal Appeals shall be
5 authorized to develop and disseminate a standard form for an
6 application in conformity with the provisions of this section.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1090.4 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 A. No period of limitation shall apply to the filing of any
11 application seeking sentencing relief, whether an original
12 application or a subsequent application.

13 B. For those seeking to submit an application after revocation
14 of a suspended sentence, acceleration of a deferred sentence, or
15 revocation of probation, the person may submit the application once
16 the person has been processed into the custody of the Department of
17 Corrections only if the person did not invoke the mitigation
18 procedures outlined in Section 3 of this act during or after the
19 revocation hearing.

20 C. For those seeking to submit an application after revocation
21 of parole or conditional release, the person may submit the
22 application once the person has been processed into the Department
23 of Corrections only if the person did not invoke the mitigation
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1 procedures outlined in Section 3 of this act during or after the
2 revocation hearing.

3 D. The provisions of this section shall apply to any
4 application filed on or after the effective date of this act.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1090.5 of Title 22, unless there
7 is created a duplication in numbering, reads as follows:

8 A. A proceeding is commenced by filing an application for
9 sentencing review with the clerk of the court imposing judgment if
10 an appeal is not pending. When such a proceeding arises from the
11 revocation of parole or conditional release, the proceeding shall be
12 commenced by filing an application with the clerk of the court in
13 the county in which the parole or conditional release was revoked.
14 Facts within the personal knowledge of the applicant and the
15 authenticity of all documents and exhibits included in or attached
16 to the application shall be sworn to be true and correct. The clerk
17 of the court shall docket the application upon its receipt, promptly
18 notify the court, and deliver a copy to the district attorney.

19 B. A valid application for consideration will show by a
20 preponderance of the evidence, including but not limited to
21 documentary evidence, corroborating that the applicant:

22 1. Was, at the time of the offense, or within one (1) year
23 leading up to the commission of the offense, a victim of domestic
24 abuse, as such term is defined in Section 2 of this act; and

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

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1090.6 of Title 22, unless there
20 is created a duplication in numbering, reads as follows:

21 A. If the applicant is unable to pay court costs and expenses
22 of representation, the applicant shall include an affidavit to that
23 effect with the application, which shall then be filed without
24 costs. Counsel necessary in representation shall be made available

1 to the applicant upon filing the application and a finding by the
2 court that such assistance is necessary to provide a fair
3 determination of sentencing relief. If an attorney is appointed to
4 represent such an applicant then the fees and expenses of such
5 attorney shall be paid from the court fund.

6 SECTION 8. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1090.7 of Title 22, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Within thirty (30) days after the docketing of the
10 application, the state may file an objection if the state has
11 evidence that directly controverts the evidence of abuse submitted
12 by the applicant. In considering the application, the court shall
13 take account of the substance of the application, regardless of any
14 defects of form. The court may also allow depositions and
15 affidavits for good cause shown.

16 B. When a court is satisfied, on the basis of the application,
17 the answer or motion of respondent, and the record, that the
18 applicant is not entitled to sentencing review and no purpose would
19 be served by any further proceedings, the court may order the
20 application dismissed or grant leave to file an amended application.
21 Where such evidence exists in the record, an evidentiary hearing
22 shall be ordered. The judge assigned to the case should not dispose
23 of it on the basis of information within his or her personal
24 knowledge not made a part of the record.

1 C. The court may grant a motion by either party for summary
2 disposition of the application when it appears from the response and
3 pleadings that there is no genuine basis for seeking a sentencing
4 review. An order disposing of an application without a hearing
5 shall state the findings and conclusions of the court regarding the
6 issues presented.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1090.8 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 A. If the applicant meets the evidentiary burden in the
11 pleadings, the court shall conduct a sentencing review hearing at
12 which time a record shall be made and preserved. The court may
13 receive proof by affidavits, depositions, oral testimony, or other
14 evidence and may order the applicant to be brought before the court
15 for the hearing. A judge should not preside at such a hearing if
16 his or her testimony is material. The court shall make specific
17 findings of fact regarding whether or not the applicant was a
18 survivor of domestic abuse at the time of the criminal offense. If
19 the court finds by a preponderance of the evidence that the
20 applicant is a survivor of domestic abuse, then the new sentencing
21 range for the defendant shall be:

22 1. If the offense carries up to five (5) years, not more than
23 two (2) years;

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1 2. If the offense carries up to ten (10) years, not more than
2 four (4) years; or

3 3. If the offense carries up to twenty (20) years, not more
4 than seven (7) years.

5 No matter the range for the offense, an applicant that meets the
6 evidentiary burden by a preponderance of the evidence under this
7 section shall not receive a sentence longer than ten (10) years.

8 B. The court shall amend the judgment and sentence of the
9 applicant to the new sentence. The order issued by the court shall
10 be a final judgment.

11 SECTION 10. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1090.9 of Title 22, unless there
13 is created a duplication in numbering, reads as follows:

14 If the court finds in the affirmative that the applicant was a
15 survivor of domestic abuse at the time of the criminal offense, the
16 court shall amend the judgment and sentence to reflect a new
17 sentence consistent with that provided in Section 9 of this act. If
18 the amended sentence reflects less time than the applicant has
19 already served in the custody of the Department of Corrections, then
20 the court shall also issue an order of discharge for the applicant.
21 The court shall enter any supplementary orders as to time served,
22 custody, bail, discharge, or other matters that may be necessary and
23 proper.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1090.10 of Title 22, unless
3 there is created a duplication in numbering, reads as follows:

4 All grounds for sentencing relief available to an applicant
5 under the provisions of this act, shall be raised in his or her
6 original, supplemental or amended application. Any ground
7 previously adjudicated or not raised or knowingly, voluntarily and
8 intelligently waived in the proceeding that resulted in the
9 conviction or sentence, or in any other proceeding the applicant has
10 taken to secure relief, may not be the basis for a subsequent
11 application.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1090.11 of Title 22, unless
14 there is created a duplication in numbering, reads as follows:

15 A. An amended judgment and sentence entered under the
16 provisions of this act may be appealed to the Court of Criminal
17 Appeals by the applicant or the state within thirty (30) days from
18 the entry of the amended judgment and sentence.

19 B. Upon motion of either party on filing a notice of intent to
20 appeal, within ten (10) days of entering the amended judgment and
21 sentence, the district court may stay the execution of the amended
22 judgment and sentence pending disposition on appeal; provided,
23 however, the Court of Criminal Appeals may direct the vacation of
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1 the order staying the execution prior to final disposition of the
2 appeal.

3 SECTION 13. This act shall become effective November 1, 2023.

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