

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3640

By: Hasenbeck

AS INTRODUCED

An Act relating to sentencing; creating the Oklahoma Domestic Abuse Survivorship Act; defining terms; directing courts to consider certain mitigating factors during sentencing and pleas; requiring defendants to provide documentary evidence; providing the court the discretion to depart from applicable sentences; allowing certain persons to make application for sentencing relief; authorizing the Court of Criminal Appeals to develop and disseminate standard application form; stating absence of a limitation period when applying for relief; providing guidelines for when persons may apply for relief; 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; stating requirement for appeals; requiring certain attorneys to complete annual education and training; amending 22 O.S. 2021, Section 982, which relates to presentence investigations; expanding scope of circumstances; providing for codification; and providing an effective date.

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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 of Title 22, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 4 of this act shall be known and may be cited as the "Oklahoma Domestic Abuse Survivorship Act".

SECTION 2. 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:

As used in this act:

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

2. "Deferred sentence" means a type of sentence as provided in Section 991c of Title 22 of the Oklahoma Statutes;

3. "Domestic abuse" 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;

1 4. "Economic-financial control" means any behavior that has a
2 substantial and adverse effect on the ability of an individual to:

- 3 a. acquire, use, or maintain money or other property,
4 b. obtain goods including, but not limited to, food and
5 clothing, or
6 c. obtain services including, but not limited to,
7 utilities.

8 Economic-financial control also includes fraudulently opening
9 financial accounts and borrowing money from his or her intimate
10 partner or family or household member;

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

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

17 7. "Psychological abuse" means a pattern of real or threatened
18 mental intimidation, threats, coercive control, economic-financial
19 control, and humiliation that is intended to provoke fear of harm;
20 and

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

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1090.2 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A. During a hearing to:

5 1. Sentence a person; or

6 2. Accept a plea of guilty,

7 for a person who is a survivor of domestic abuse, and has been
8 charged with the crime against his or her intimate partner where
9 self-defense could have been raised as an affirmative defense, the
10 court shall consider as a mitigating factor that the person has been
11 abused physically, sexually, or psychologically by the person the
12 defendant defended himself or herself against, along with any other
13 mitigating or aggravating factors.

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 (1) 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, perpetrated by the person the
20 defendant defended himself or herself against; and

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

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

16 C. If the court finds by a preponderance of the evidence that
17 the defendant is a survivor of domestic abuse within one (1) year
18 prior to or on the date of the offense by the person the defendant
19 defended himself or herself against, then the court shall have the
20 discretion to depart from the applicable sentence. Such findings of
21 fact shall be on the record after giving due regard to the evidence
22 submitted to the court by the defendant.

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

4 A. Any person who has been convicted or received a sentence for
5 a crime against his or her intimate partner where self-defense could
6 have been raised as an affirmative defense and the abuse was
7 perpetrated by the person the defendant was defending himself or
8 herself against and who claims:

9 1. That he or she was a victim of domestic abuse, as defined in
10 Section 2 of this act, at the time of the criminal offense or within
11 one (1) year leading up to the criminal offense perpetrated by the
12 person the defendant defended himself or herself against;

13 2. That the aforementioned domestic abuse was substantially
14 related to the commission of the offense; or

15 3. That the sentence previously imposed does not serve the
16 means of justice when considering the mitigating evidence of
17 physical, sexual, or psychological abuse,
18 may make an application to the court in which the judgment and
19 sentence of the person was imposed. Upon receiving the application,
20 the court shall institute a proceeding to secure the appropriate
21 sentencing relief. The Court of Criminal Appeals shall be
22 authorized to develop and disseminate a standard form for an
23 application in conformity with the provisions of this section.
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1 SECTION 5. 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. No period of limitation shall apply to the filing of any
5 application seeking sentencing relief, whether an original
6 application or a subsequent application.

7 B. For those seeking to submit an application after revocation
8 of a suspended sentence, acceleration of a deferred sentence, or
9 revocation of probation, the person may submit the application once
10 the person has been processed into the custody of the Department of
11 Corrections only if the person did not invoke the mitigation
12 procedures outlined in Section 3 of this act during or after the
13 revocation hearing.

14 C. For those seeking to submit an application after revocation
15 of parole or conditional release, the person may submit the
16 application once the person has been processed into the Department
17 of 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 D. The provisions of this section shall apply to any
21 application filed on or after the effective date of this act.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1090.5 of Title 22, unless there
24 is created a duplication in numbering, reads as follows:
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1 A. A proceeding is commenced by filing an application for
2 sentencing review with the clerk of the court imposing judgment if
3 an appeal is not pending. When such a proceeding arises from the
4 revocation of parole or conditional release, the proceeding shall be
5 commenced by filing an application with the clerk of the court in
6 the county in which the parole or conditional release was revoked.
7 Facts within the personal knowledge of the applicant and the
8 authenticity of all documents and exhibits included in or attached
9 to the application shall be sworn to be true and correct. The clerk
10 of the court shall docket the application upon its receipt, promptly
11 notify the court, and deliver a copy to the district attorney.

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

15 1. Was, at the time of the offense, or within one (1) year
16 leading up to the commission of the offense, a victim of domestic
17 abuse, as such term is defined in Section 2 of this act, perpetrated
18 by the person the defendant defended himself or herself against; and

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

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

15 If the applicant is unable to pay court costs and expenses of
16 representation, the applicant shall include an affidavit to that
17 effect with the application, which shall then be filed without
18 costs. Counsel necessary in representation shall be made available
19 to the applicant upon filing the application and a finding by the
20 court that such assistance is necessary to provide a fair
21 determination of sentencing relief. If an attorney is appointed to
22 represent such an applicant then the fees and expenses of such
23 attorney shall be paid from the court fund. The attorney, if

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1 appointed, shall be employed by the respective county's indigent
2 defense agency.

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

6 A. Within thirty (30) days after the docketing of the
7 application, the state may file an objection if the state has
8 evidence that directly controverts the evidence of abuse submitted
9 by the applicant or evidence that provides additional context to the
10 battering relationship. In considering the application, the court
11 shall take account of the substance of the application, regardless
12 of any defects of form. The court may also allow affidavits for
13 good cause shown. Depositions may be employed only when there is no
14 other means of obtaining testimony.

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

1 C. The court may grant a motion by the state 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. Any live testimony shall be subject to direct and
16 cross examination. The state may present evidence only if it
17 directly controverts the evidence of abuse offered by the applicant,
18 or evidence that provides additional context to the battering
19 relationship. A judge should not preside at such a hearing if his
20 or her testimony is material. The court shall make specific
21 findings of fact regarding whether or not the applicant was a
22 survivor of domestic abuse at the time of the criminal offense or
23 within one (1) year prior to the offense and that the abuse was
24 perpetrated by the person the defendant defended himself or herself

1 against. If the court finds by a preponderance of the evidence that
2 the applicant is a survivor of domestic abuse, then the new
3 sentencing range for the defendant shall be:

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

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

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

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

13 B. The court shall amend the judgment and sentence of the
14 applicant to the new sentence. The order issued by the court shall
15 be a final judgment.

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

19 If the court finds in the affirmative that the applicant was a
20 survivor of domestic abuse at the time of the criminal offense or
21 within one (1) year prior to the offense and that the abuse was
22 perpetrated by the person the defendant defended himself or herself
23 against, the court shall amend the judgment and sentence to reflect
24 a new sentence consistent with that provided in Section 9 of this
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1 act. If the amended sentence reflects less time than the applicant
2 has already served in the custody of the Department of Corrections,
3 then the court shall also issue an order of discharge for the
4 applicant. The court shall enter any supplementary orders as to
5 time served, custody, bail, discharge, or other matters that may be
6 necessary and proper.

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

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

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

20 A. A denied application or an amended judgment and sentence
21 entered under the provisions of this act may be appealed to the
22 Court of Criminal Appeals by the applicant or the state within
23 thirty (30) days from the entry of the amended judgment and
24 sentence.
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1 B. Upon motion of either party on filing a notice of intent to
2 appeal, within ten (10) days of entering the amended judgment and
3 sentence, the district court may stay the execution of the amended
4 judgment and sentence pending disposition on appeal; provided,
5 however, the Court of Criminal Appeals may direct the vacation of
6 the order staying the execution prior to final disposition of the
7 appeal.

8 SECTION 13. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1090.12 of Title 22, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Any district attorney, assistant district attorney, public
12 defender, assistant public defender, attorney employed by or under
13 contract with the Oklahoma Indigent Defense System, court-appointed
14 attorney, private defense attorneys, or attorney employed by or
15 under contract with a district court whose duties include domestic
16 violence responsibility shall complete at least three (3) hours of
17 education and training annually in courses relating to the topics
18 described in paragraph 1 of subsection A of this section. The
19 education and training requirements may be accomplished through a
20 collaborative effort between the judiciary and others with domestic
21 violence responsibilities.

22 B. Each judicial district shall be responsible for developing
23 and administering procedures and rules for such courses for
24 attorneys identified in paragraph 1 of this subsection whose duties
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1 routinely include domestic violence responsibilities. The chief
2 judge of each judicial district, or any designee judge with domestic
3 violence case responsibilities, shall carry out this mandate within
4 one (1) year of the effective date of this act.

5 SECTION 14. AMENDATORY 22 O.S. 2021, Section 982, is
6 amended to read as follows:

7 Section 982. A. Whenever a person is convicted of a violent
8 felony offense whether the conviction is for a single offense or
9 part of any combination of offenses, except when the death sentence
10 is available as punishment for the offense, the court may, before
11 imposing the sentence, require a presentence investigation be made
12 of the offender by the Department of Corrections. The court shall
13 order the defendant to pay a fee to the Department of Corrections of
14 not less than Fifty Dollars (\$50.00) nor more than Five Hundred
15 Dollars (\$500.00) for the presentence investigation. In hardship
16 cases, the court may reduce the amount of the fee and establish a
17 payment schedule.

18 B. Whenever a person has a prior felony conviction and enters a
19 plea of guilty or nolo contendere to a felony offense other than a
20 violent felony offense, without an agreement by the district
21 attorney regarding the sentence to be imposed, the court may order a
22 presentence investigation be made by the Department of Corrections.
23 The fee provided in subsection A of this section shall apply to
24 persons subject to this subsection.

1 C. Whenever a person has entered a plea of not guilty to a
2 nonviolent felony offense and is found guilty by a court following a
3 non-jury trial, the court may require a presentence investigation be
4 made by the Department of Corrections. The fee provided in
5 subsection A of this section shall apply to persons subject to this
6 subsection.

7 D. When conducting a presentence investigation, the Department
8 shall inquire into the circumstances of the offense and the
9 characteristics of the offender. The information obtained from the
10 investigation shall include, but not be limited to, a voluntary
11 statement from each victim of the offense concerning the nature of
12 the offense and the impact of the offense on the victim and the
13 immediate family of the victim, the amount of the loss suffered or
14 incurred by the victim as a result of the criminal conduct of the
15 offender, and the age, marital status, living arrangements,
16 financial obligations, income, family history and education, prior
17 juvenile and criminal records, prior abusive relationships, prior
18 sexual assaults, prior experience as a victim of human trafficking,
19 associations with other persons convicted of a felony offense,
20 social history, indications of a predisposition to violence or
21 substance abuse, remorse or guilt about the offense or the harm to
22 the victim, job skills and employment history of the offender. The
23 Department shall make a report of information from such
24 investigation to the court, including a recommendation detailing the
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1 punishment which is deemed appropriate for both the offense and the
2 offender, and specifically a recommendation for or against probation
3 or suspended sentence. The report of the investigation shall be
4 presented to the judge within a reasonable time, and upon failure to
5 present the report, the judge may proceed with sentencing.

6 Whenever, in the opinion of the court or the Department, it is
7 desirable, the investigation shall include a physical and mental
8 examination or either a physical or mental examination of the
9 offender.

10 E. The district attorney may have a presentence investigation
11 made by the Department on each person charged with a violent felony
12 offense and entering a plea of guilty or a plea of nolo contendere
13 as part of or in exchange for a plea agreement for a violent felony
14 offense. The presentence investigation shall be completed before
15 the terms of the plea agreement are finalized. The court shall not
16 approve the terms of any plea agreement without reviewing the
17 presentence investigation report to determine whether or not the
18 terms of the sentence are appropriate for both the offender and the
19 offense. The fee provided in subsection A of this section shall
20 apply to persons subject to this subsection and shall be a condition
21 of the plea agreement and sentence.

22 F. The presentence investigation reports specified in this
23 section shall not be referred to, or be considered, in any appeal
24 proceedings. Before imposing a sentence, the court shall advise the
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1 defendant, counsel for the defendant, and the district attorney of
2 the factual contents and conclusions of the presentence
3 investigation report. The court shall afford the offender a fair
4 opportunity to controvert the findings and conclusions of the
5 reports at the time of sentencing. If either the defendant or the
6 district attorney desires, a hearing shall be set by the court to
7 allow both parties an opportunity to offer evidence proving or
8 disproving any finding contained in a report, which shall be a
9 hearing in mitigation or aggravation of punishment.

10 G. The required presentence investigation and report may be
11 waived upon written waiver by the district attorney and the
12 defendant and upon approval by the Court.

13 H. As used in this section, "violent felony offense" means:

- 14 1. Arson in the first degree;
- 15 2. Assault with a dangerous weapon, battery with a dangerous
16 weapon or assault and battery with a dangerous weapon;
- 17 3. Aggravated assault and battery on a police officer, sheriff,
18 highway patrol officer, or any other officer of the law;
- 19 4. Assault with intent to kill, or shooting with intent to
20 kill;
- 21 5. Assault with intent to commit a felony, or use of a firearm
22 to commit a felony;
- 23 6. Assault while masked or disguised;
- 24 7. Burglary in the first degree or burglary with explosives;

- 1 8. Child beating or maiming;
- 2 9. Forcible sodomy;
- 3 10. Kidnapping, or kidnapping for extortion;
- 4 11. Lewd or indecent proposition or lewd or indecent acts with
5 a child;
- 6 12. Manslaughter in the first or second degrees;
- 7 13. Murder in the first or second degrees;
- 8 14. Rape in the first or second degrees, or rape by
9 instrumentation;
- 10 15. Robbery in the first or second degrees, or robbery by two
11 or more persons, or robbery with a dangerous weapon; or
- 12 16. Any attempt, solicitation or conspiracy to commit any of
13 the above enumerated offenses.

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1 SECTION 15. This act shall become effective November 1, 2024.

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