

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 HOUSE BILL 3640

 By: Hasenbeck

5
6 AS INTRODUCED

7 An Act relating to sentencing; creating the Oklahoma
8 Domestic Abuse Survivorship Act; defining terms;
9 directing courts to consider certain mitigating
10 factors during sentencing and pleas; requiring
11 defendants to provide documentary evidence; providing
12 the court the discretion to depart from applicable
13 sentences; allowing certain persons to make
14 application for sentencing relief; authorizing the
15 Court of Criminal Appeals to develop and disseminate
16 standard application form; stating absence of a
17 limitation period when applying for relief; providing
18 guidelines for when persons may apply for relief;
19 providing procedures for filing applications; stating
20 types of documentary evidence necessary for
21 consideration; providing for the filing of
22 applications without costs under certain
23 circumstances; allowing the state to object upon
24 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.

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

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

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

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

10 As used in this act:

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

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

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

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

24 a. acquire, use, or maintain money or other property,

- 1 b. obtain goods including, but not limited to, food and
2 clothing, or
3 c. obtain services including, but not limited to,
4 utilities.

5 Economic-financial control also includes fraudulently opening
6 financial accounts and borrowing money from his or her intimate
7 partner or family or household member;

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

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

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

18 8. "Sentencing hearing" means a type of postconviction hearing
19 in which the defendant is brought before the court for imposition of
20 the sentence.

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

24 A. During a hearing to:

1 1. Sentence a person; or
2 2. Accept a plea of guilty,
3 for a person who is a survivor of domestic abuse, and has been
4 charged with the crime against his or her intimate partner where
5 self-defense could have been raised as an affirmative defense, the
6 court shall consider as a mitigating factor that the person has been
7 abused physically, sexually, or psychologically by the person the
8 defendant defended himself or herself against, along with any other
9 mitigating or aggravating factors.

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

12 1. Documentary evidence, corroborating that the defendant was,
13 at the time of the offense or within one (1) year prior to the
14 commission of the offense, a victim of domestic abuse, as such term
15 is defined in Section 2 of this act, perpetrated by the person the
16 defendant defended himself or herself against; and

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

22 Other evidence may include, but shall not be limited to, local
23 jail records or records of the Department of Corrections,
24 documentation prepared at or near the time of the commission of the

1 offense or the prosecution thereof tending to support the claims of
2 the defendant, or verification of consultation with a licensed
3 medical care provider or mental health care provider, employee of a
4 court acting within the scope of his or her employment, member of
5 the clergy, attorney, social worker, or rape crisis counselor, or
6 other advocate acting on behalf of an agency that assists victims of
7 domestic abuse. Expert testimony from a psychiatrist, psychologist,
8 or mental health professional showing that the defendant has been
9 diagnosed with posttraumatic stress disorder as a result of domestic
10 violence may also be submitted to the court as evidence.

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

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

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

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

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

9 3. That the sentence previously imposed does not serve the
10 means of justice when considering the mitigating evidence of
11 physical, sexual, or psychological abuse,
12 may make an application to the court in which the judgment and
13 sentence of the person was imposed. Upon receiving the application,
14 the court shall institute a proceeding to secure the appropriate
15 sentencing relief. The Court of Criminal Appeals shall be
16 authorized to develop and disseminate a standard form for an
17 application in conformity with the provisions of this section.

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

21 A. No period of limitation shall apply to the filing of any
22 application seeking sentencing relief, whether an original
23 application or a subsequent application.

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

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

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

19 A. A proceeding is commenced by filing an application for
20 sentencing review with the clerk of the court imposing judgment if
21 an appeal is not pending. When such a proceeding arises from the
22 revocation of parole or conditional release, the proceeding shall be
23 commenced by filing an application with the clerk of the court in
24 the county in which the parole or conditional release was revoked.

1 Facts within the personal knowledge of the applicant and the
2 authenticity of all documents and exhibits included in or attached
3 to the application shall be sworn to be true and correct. The clerk
4 of the court shall docket the application upon its receipt, promptly
5 notify the court, and deliver a copy to the district attorney.

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

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

13 2. At least one piece of documentary evidence shall be a court
14 record, presentence report, social services record, hospital record,
15 sworn statement from a witness to the domestic violence who is not
16 the defendant, law enforcement record, domestic incident report, or
17 order of protection. Other evidence may include, but shall not be
18 limited to, local jail records or records of the Department of
19 Corrections, documentation prepared at or near the time of the
20 commission of the offense or the prosecution thereof tending to
21 support the claims of the person, or verification of consultation
22 with a licensed medical care provider or mental health care
23 provider, employee of a court acting within the scope of his or her
24 employment, member of the clergy, attorney, social worker, or rape

1 crisis counselor, or other advocate acting on behalf of an agency
2 that assists victims of domestic abuse. Expert testimony from a
3 psychiatrist, psychologist, or mental health professional showing
4 that the defendant has been diagnosed with posttraumatic stress
5 disorder may also be submitted to the court as evidence.

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

9 If the applicant is unable to pay court costs and expenses of
10 representation, the applicant shall include an affidavit to that
11 effect with the application, which shall then be filed without
12 costs. Counsel necessary in representation shall be made available
13 to the applicant upon filing the application and a finding by the
14 court that such assistance is necessary to provide a fair
15 determination of sentencing relief. If an attorney is appointed to
16 represent such an applicant then the fees and expenses of such
17 attorney shall be paid from the court fund. The attorney, if
18 appointed, shall be employed by the respective county's indigent
19 defense agency.

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

23 A. Within thirty (30) days after the docketing of the
24 application, the state may file an objection if the state has

1 evidence that directly controverts the evidence of abuse submitted
2 by the applicant or evidence that provides additional context to the
3 battering relationship. In considering the application, the court
4 shall take account of the substance of the application, regardless
5 of any defects of form. The court may also allow affidavits for
6 good cause shown. Depositions may be employed only when there is no
7 other means of obtaining testimony.

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

17 C. The court may grant a motion by the state for summary
18 disposition of the application when it appears from the response and
19 pleadings that there is no genuine basis for seeking a sentencing
20 review. An order disposing of an application without a hearing
21 shall state the findings and conclusions of the court regarding the
22 issues presented.

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

4 A. If the applicant meets the evidentiary burden in the
5 pleadings, the court shall conduct a sentencing review hearing at
6 which time a record shall be made and preserved. The court may
7 receive proof by affidavits, depositions, oral testimony, or other
8 evidence and may order the applicant to be brought before the court
9 for the hearing. Any live testimony shall be subject to direct and
10 cross examination. The state may present evidence only if it
11 directly controverts the evidence of abuse offered by the applicant,
12 or evidence that provides additional context to the battering
13 relationship. A judge should not preside at such a hearing if his
14 or her testimony is material. The court shall make specific
15 findings of fact regarding whether or not the applicant was a
16 survivor of domestic abuse at the time of the criminal offense or
17 within one (1) year prior to the offense and that the abuse was
18 perpetrated by the person the defendant defended himself or herself
19 against. If the court finds by a preponderance of the evidence that
20 the applicant is a survivor of domestic abuse, then the new
21 sentencing range for the defendant shall be:

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

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1 2. If the offense carries up to ten (10) years, not more than
2 five (5) 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 or
16 within one (1) year prior to the offense and that the abuse was
17 perpetrated by the person the defendant defended himself or herself
18 against, the court shall amend the judgment and sentence to reflect
19 a new sentence consistent with that provided in Section 9 of this
20 act. If the amended sentence reflects less time than the applicant
21 has already served in the custody of the Department of Corrections,
22 then the court shall also issue an order of discharge for the
23 applicant. The court shall enter any supplementary orders as to
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1 time served, custody, bail, discharge, or other matters that may be
2 necessary and proper.

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

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

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

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

21 B. Upon motion of either party on filing a notice of intent to
22 appeal, within ten (10) days of entering the amended judgment and
23 sentence, the district court may stay the execution of the amended
24 judgment and sentence pending disposition on appeal; provided,

1 however, the Court of Criminal Appeals may direct the vacation of
2 the order staying the execution prior to final disposition of the
3 appeal.

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

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

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

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

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

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

21 C. Whenever a person has entered a plea of not guilty to a
22 nonviolent felony offense and is found guilty by a court following a
23 non-jury trial, the court may require a presentence investigation be
24 made by the Department of Corrections. The fee provided in

1 subsection A of this section shall apply to persons subject to this
2 subsection.

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

1 present the report, the judge may proceed with sentencing.

2 Whenever, in the opinion of the court or the Department, it is
3 desirable, the investigation shall include a physical and mental
4 examination or either a physical or mental examination of the
5 offender.

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

18 F. The presentence investigation reports specified in this
19 section shall not be referred to, or be considered, in any appeal
20 proceedings. Before imposing a sentence, the court shall advise the
21 defendant, counsel for the defendant, and the district attorney of
22 the factual contents and conclusions of the presentence
23 investigation report. The court shall afford the offender a fair
24 opportunity to controvert the findings and conclusions of the

1 reports at the time of sentencing. If either the defendant or the
2 district attorney desires, a hearing shall be set by the court to
3 allow both parties an opportunity to offer evidence proving or
4 disproving any finding contained in a report, which shall be a
5 hearing in mitigation or aggravation of punishment.

6 G. The required presentence investigation and report may be
7 waived upon written waiver by the district attorney and the
8 defendant and upon approval by the Court.

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

- 10 1. Arson in the first degree;
- 11 2. Assault with a dangerous weapon, battery with a dangerous
12 weapon or assault and battery with a dangerous weapon;
- 13 3. Aggravated assault and battery on a police officer, sheriff,
14 highway patrol officer, or any other officer of the law;
- 15 4. Assault with intent to kill, or shooting with intent to
16 kill;
- 17 5. Assault with intent to commit a felony, or use of a firearm
18 to commit a felony;
- 19 6. Assault while masked or disguised;
- 20 7. Burglary in the first degree or burglary with explosives;
- 21 8. Child beating or maiming;
- 22 9. Forcible sodomy;
- 23 10. Kidnapping, or kidnapping for extortion;
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- 1 11. Lewd or indecent proposition or lewd or indecent acts with
- 2 a child;
- 3 12. Manslaughter in the first or second degrees;
- 4 13. Murder in the first or second degrees;
- 5 14. Rape in the first or second degrees, or rape by
- 6 instrumentation;
- 7 15. Robbery in the first or second degrees, or robbery by two
- 8 or more persons, or robbery with a dangerous weapon; or
- 9 16. Any attempt, solicitation or conspiracy to commit any of
- 10 the above enumerated offenses.

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

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13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
14 02/12/2024 - DO PASS.

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