

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1835 _____
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: Jon Echols _____

Reading Clerk

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1835

6 By: Gollihare of the Senate

7 and

8 Echols of the House

9 FLOOR SUBSTITUTE

10 An Act relating to sentencing; creating the Oklahoma
11 Survivors' Act; providing short title; defining
12 terms; directing courts to consider certain
13 mitigating factors during sentencing and pleas;
14 requiring defendants to provide certain evidence;
15 allowing courts the discretion to depart from
16 applicable sentences; authorizing courts to impose
17 lesser sentences under certain circumstances;
18 providing for the introduction of certain arguments
19 and testimony; allowing defendants with certain
20 sentences to request an application for resentencing;
21 requiring inclusion of specific information when
22 making request; providing jurisdictional
23 requirements; providing notice procedures when
24 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.

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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 1090.1 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;

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

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

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

10 A. During a hearing to:

11 1. Sentence a person; or

12 2. Accept a plea of guilty,

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

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

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

23 2. At least one piece of documentary evidence that is a court
24 record, presentence report, social services record, hospital record,

1 sworn statement from a witness to the domestic violence or abuse who
2 is not the defendant, law enforcement record, domestic incident
3 report, or protective order.

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

18 C. If the court finds by clear and convincing evidence that at
19 the time of the offense the defendant was a survivor of domestic
20 violence or subjected to physical, sexual, or psychological abuse
21 inflicted by a sexual partner, a family member or member of the
22 household, the trafficker of the defendant, or any person who used
23 the defendant for financial gain, and that the violence or abuse was
24 related to and was a substantial contributing factor in causing the

1 defendant to commit the offense or to the defendant's criminal
2 behavior, the court shall depart from the applicable sentence to the
3 ranges provided as follows:

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

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

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

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

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

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

16 D. The provisions of this section shall not apply to a person
17 convicted of:

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

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

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

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

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

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

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

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

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

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

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

12 A. Any person who is:

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

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

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

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

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

23 that he or she is confined in an institution under the custody and
24 control of the Department of Corrections and is serving a sentence

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

2 The person shall also declare that he or she is eligible for an
3 alternative sentence under the provisions of Section 3 of this act.

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

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

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

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

22 E. If the judge that receives the application is not the judge
23 who originally sentenced the applicant, the application may be
24 referred to the original sentencing judge if he or she is serving as

1 a judge of a court of competent jurisdiction and the applicant and
2 the district attorney agree that the application should be referred.

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

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

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

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

1 inability of the applicant to participate in treatment or other
2 programming while incarcerated despite the willingness of the
3 applicant to do so shall not be considered a negative factor when
4 the court is making its determination.

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

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

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

1 1. An order denying resentencing; or

2 2. A new sentence imposed under the provisions of this section.

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

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

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

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

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