

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1470

By: Treat

AS INTRODUCED

An Act relating to sentencing; creating the Oklahoma Survivors' Act; providing short title; defining terms; directing courts to consider certain mitigating factors during sentencing and pleas; requiring defendants to provide certain evidence; allowing courts discretion to depart from applicable sentences; authorizing courts to impose lesser sentences under certain circumstances; providing for the introduction of certain arguments and testimony; allowing defendants with certain sentences to request an application for resentencing; requiring inclusion of certain information when making request; providing jurisdictional requirements; providing notice procedures when granting or denying requests; allowing defendants to request the appointment of counsel; directing court clerks to send notification to the appropriate district attorney; requiring the inclusion of certain evidence with applications; providing for dismissal of applications; establishing hearing procedures upon approval of applications; providing notice procedures for orders issued by the court; establishing sentencing ranges for new sentences; providing for the appeal of orders; allowing applicants to request the appointment of counsel; requiring time served to be credited toward sentence; providing for codification; and providing an effective date.

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

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

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

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

9 As used in this act:

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

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

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

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

23 5. "Post-traumatic stress disorder" means the same as such term  
24 is defined in the Diagnostic and Statistical Manual of Mental

1 Disorders, Fifth Edition (DSM-5, 2013), and occurred as a result of  
2 the victimization of a survivor;

3 6. "Psychological abuse" means a pattern of real or threatened  
4 mental intimidation, threats, coercive control, economic-financial  
5 control, and humiliation that is intended to provoke fear of harm;  
6 and

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

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

13 A. During a hearing to:

- 14 1. Sentence a person; or
- 15 2. Accept a plea of guilty,

16 for a person who is a survivor of domestic abuse, and has been  
17 charged with a crime, the court shall consider as a mitigating  
18 factor that the person has been abused physically, sexually, or  
19 psychologically by the person's intimate partner or family member.

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

- 22 1. Documentary evidence corroborating that the defendant was,  
23 at the time of the offense or within one (1) year prior to the  
24

1 commission of the offense, a victim of domestic abuse perpetrated by  
2 the person the defendant defended himself or herself against; and

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

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

21 C. If the court finds by a preponderance of the evidence that  
22 the defendant is a survivor of domestic abuse within one (1) year  
23 prior to or on the date of the offense and that abuse was a  
24 substantial contributing factor to the defendant's criminal

1 liability, the court shall depart from the applicable sentence to  
2 the ranges provided as follows:

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

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

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

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

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

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

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

18 A. Where a court has imposed a criminal judgment and sentence  
19 upon a defendant other than for an offense which would require such  
20 defendant to register as a sex offender pursuant to the Sex  
21 Offenders Registration Act, an attempt or conspiracy to commit any  
22 such offense, or any crime for which the defendant has been  
23 sentenced to death, and the defendant is serving the sentence in the  
24

1 custody of the Department of Corrections, the court shall impose a  
2 new, lesser sentence upon a determination following a hearing that:

3 1. At the time of the offense for which the sentence is being  
4 served, the defendant was a victim of domestic violence and  
5 subjected to physical, sexual, or psychological abuse inflicted by a  
6 member of the same family or household as the defendant, or someone  
7 who was an intimate partner of the defendant; and

8 2. Such abuse was a significant contributing factor to the  
9 criminal behavior of the defendant.

10 At the hearing to determine whether the defendant should be  
11 resentenced pursuant to this section, the court shall consider oral  
12 and written arguments, take testimony from witnesses offered by  
13 either party, and consider all relevant evidence to assist in making  
14 its determination. The court may determine that such abuse  
15 constitutes a significant contributing factor to the crime  
16 regardless of whether the defendant raised an affirmative defense.

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

20 A. Any person who is:

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

1           2. Serving a sentence with a minimum term of eight (8) years or  
2 more for an offense committed prior to the effective date of this  
3 act; and

4           3. Eligible for an alternative sentence pursuant to the  
5 provisions of Section 3 of this act,  
6 may, on or after the effective date of this act, submit to the judge  
7 who imposed the original sentence a request to apply for  
8 resentencing in accordance with the provisions of Section 3 of this  
9 act. Such person shall include in the request documentation showing  
10 that he or she is confined in an institution under the custody and  
11 control of the Department of Corrections and is serving a sentence  
12 of a minimum term of eight (8) years or more for an offense  
13 committed prior to the effective date of this act. The person shall  
14 also declare that he or she is eligible for an alternative sentence  
15 under the provisions of Section 3 of this act.

16           B. At the time of the request to apply for resentencing, if the  
17 original sentencing judge is a judge or justice of a court of  
18 competent jurisdiction, but such court is not the court in which the  
19 original sentence was imposed, the request shall be randomly  
20 assigned to another judge of the court in which the original  
21 sentence was imposed. If the original sentencing judge is no longer  
22 a judge of a court of competent jurisdiction, the request shall be  
23 randomly assigned to another judge of the appropriate court.

1 C. 1. If the court finds that such person has met the  
2 requirements to apply for resentencing as provided in subsection A  
3 of this section, the court shall provide notice to the person that  
4 he or she may submit an application for resentencing. Upon such  
5 notification, the person may request the court appoint an attorney  
6 to assist the person in the preparation of and proceedings on the  
7 application for resentencing.

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

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

15 E. If the judge that received the application is not the judge  
16 who originally sentenced the applicant, the application may be  
17 referred to the original sentencing judge provided that he or she is  
18 a judge of a court of competent jurisdiction and the applicant and  
19 the district attorney agree that the application should be referred.

20 F. An application for resentencing pursuant to this section  
21 shall include evidence corroborating the claim of the applicant that  
22 he or she was, within one (1) year prior to or at the time of the  
23 offense, a victim of domestic violence and subjected to substantial  
24 physical, sexual, or psychological abuse inflicted by a member of

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

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

23 2. If the court finds that the applicant has complied with the  
24 provisions of subsection F of this section, the court shall conduct

1 a hearing to aid in making its determination of whether the  
2 applicant should be resentenced in accordance with Section 3 of this  
3 act. At the hearing, the court shall determine any controverted  
4 issues of fact relevant to the issue of sentencing. The court may  
5 consider any facts or circumstances relevant to the imposition of a  
6 new sentence submitted by the applicant or the district attorney and  
7 may consider the institutional record of confinement of such person;  
8 provided, however, the court shall not order a new presentence  
9 investigation and report or entertain any matter challenging the  
10 underlying basis of the subject conviction. Consideration of the  
11 institutional record of confinement of an applicant by the court  
12 shall include but not be limited to the participation or willingness  
13 of the applicant to participate in programming such as domestic  
14 violence, parenting, and substance abuse treatment while  
15 incarcerated and the disciplinary history of the applicant. The  
16 fact that the applicant may have been unable to participate in  
17 treatment or other programming while incarcerated despite the  
18 willingness of the applicant to do so shall not be considered a  
19 negative factor when the court is making its determination.

20 H. If the court determines that the applicant should not be  
21 resentenced in accordance with Section 3 of this act, the court  
22 shall inform such applicant of its decision and shall enter an order  
23 to that effect. Any order issued by a court pursuant to this  
24

1 subsection shall include written findings of fact and the reasons  
2 for such order.

3 I. If the court determines that the applicant should be  
4 resentenced in accordance with Section 3 of this act, the court  
5 shall notify the applicant that, unless he or she withdraws the  
6 application for resentencing or appeals the order of the court, the  
7 court shall enter an order vacating the sentence originally imposed  
8 and shall impose a new sentence, as authorized by Section 3 of this  
9 act. Any order issued by a court pursuant to this section shall  
10 include written findings of fact and the reasons for such order.

11 Sentences modified pursuant to the provisions of this section shall  
12 be reduced in the following manner:

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

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

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

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

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

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

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

4 1. An order denying resentencing; or

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

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

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

14 SECTION 6. This act shall become effective November 1, 2024.

15  
16 59-2-2698 TEK 12/15/2023 5:54:53 PM  
17  
18  
19  
20  
21  
22  
23  
24  
25