

FLOOR 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 FLOOR SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1639

6 By: Hasenbeck

7 FLOOR SUBSTITUTE

8 An Act relating to sentencing; creating the Oklahoma
9 Domestic Abuse Survivorship Act; defining terms;
10 directing courts to consider certain mitigating
11 factors during sentencing and pleas; requiring
12 defendants to provide certain documentary evidence;
13 providing the court the discretion to depart from
14 applicable sentences; requiring the administration of
15 an evaluation; establishing time limitation;
16 authorizing submission of results to the defendant
17 and the court; assigning responsibility of cost of
18 evaluations; requiring certain attorneys to complete
19 annual education and training; amending 22 O.S. 2021,
20 Section 982, which relates to presentence
21 investigations; expanding scope of circumstances;
22 providing for codification; and providing an
23 effective date.

24 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".

1 SECTION 2. 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 As used in this act:

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

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

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

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

18 5. "Posttraumatic stress disorder" means the same as such term
19 is defined in the Diagnostic and Statistical Manual of Mental
20 Disorders, Fifth Edition (DSM-5, 2013), and occurred as a result of
21 the victimization of a survivor;

22 6. "Psychological abuse" means a pattern of real or threatened
23 mental intimidation, threats, coercive control, economic-financial
24

1 control, and humiliation that is intended to provoke fear of harm;
2 and

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

6 SECTION 3. 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 A. During a hearing to:

10 1. Sentence a person; or

11 2. Accept a plea of guilty,

12 for a person who is a survivor of domestic abuse, and has been
13 charged with the crime against his or her intimate partner where
14 self-defense could have been raised as an affirmative defense, the
15 court shall consider as a mitigating factor that the person has been
16 abused physically, sexually, or psychologically by the person the
17 defendant defended his or herself against;

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

20 1. Documentary evidence, corroborating that the defendant was,
21 at the time of the offense or within one (1) year prior to the
22 commission of the offense, a victim of domestic abuse, as such term
23 is defined in Section 2 of this act, perpetrated by the person the
24 defendant defended his or herself against; and

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

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

19 C. If the court finds by a preponderance of the evidence that
20 the defendant is a survivor of domestic abuse within one (1) year
21 prior to or on the date of the offense by the person the defendant
22 defended his or herself against, then the court shall have the
23 discretion to depart from the applicable sentence. Furthermore, if
24 the defendant is pregnant at the time of sentencing, the court shall

1 be authorized to give due regard to such condition of the defendant
2 when departing from the applicable sentence.

3 D. Within seventy-two (72) hours after the arrest of a person
4 described in subsection A of this section, a psychological or
5 psychiatric evaluation routinely used by the Department of Mental
6 Health and Substance Abuse Services shall be administered to the
7 defendant. The evaluation shall be trauma-informed and take into
8 consideration possible common diagnoses for abuse victims such as
9 acute stress disorder and posttraumatic stress disorder. The
10 results of the evaluation shall be forwarded to the defendant and
11 submitted to the court as evidence. The Department shall conduct
12 the evaluation at no cost. Should the defendant choose to defer the
13 evaluation by the Department in favor of an evaluation conducted by
14 a private practitioner, the evaluation by the Department shall be
15 considered waived. It shall be the responsibility of the defendant
16 to bear the cost of any evaluation conducted by a private
17 practitioner.

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 district attorney, assistant district attorney, public
22 defender, assistant public defender, attorney employed by or under
23 contract with the Oklahoma Indigent Defense System, court-appointed
24 attorney, private defense attorneys, or attorney employed by or

1 under contract with a district court whose duties include domestic
2 violence responsibility shall complete at least three (3) hours of
3 education and training annually in courses relating to the topics
4 described in paragraph 1 of subsection A of this section. The
5 education and training requirements may be accomplished through a
6 collaborative effort between the judiciary and others with domestic
7 violence responsibilities.

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

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

17 Section 982. A. Whenever a person is convicted of a violent
18 felony offense whether the conviction is for a single offense or
19 part of any combination of offenses, except when the death sentence
20 is available as punishment for the offense, the court may, before
21 imposing the sentence, require a presentence investigation be made
22 of the offender by the Department of Corrections. The court shall
23 order the defendant to pay a fee to the Department of Corrections of
24 not less than Fifty Dollars (\$50.00) nor more than Five Hundred

1 Dollars (\$500.00) for the presentence investigation. In hardship
2 cases, the court may reduce the amount of the fee and establish a
3 payment schedule.

4 B. Whenever a person has a prior felony conviction and enters a
5 plea of guilty or nolo contendere to a felony offense other than a
6 violent felony offense, without an agreement by the district
7 attorney regarding the sentence to be imposed, the court may order a
8 presentence investigation be made by the Department of Corrections.
9 The fee provided in subsection A of this section shall apply to
10 persons subject to this subsection.

11 C. Whenever a person has entered a plea of not guilty to a
12 nonviolent felony offense and is found guilty by a court following a
13 non-jury trial, the court may require a presentence investigation be
14 made by the Department of Corrections. The fee provided in
15 subsection A of this section shall apply to persons subject to this
16 subsection.

17 D. When conducting a presentence investigation, the Department
18 shall inquire into the circumstances of the offense and the
19 characteristics of the offender. The information obtained from the
20 investigation shall include, but not be limited to, a voluntary
21 statement from each victim of the offense concerning the nature of
22 the offense and the impact of the offense on the victim and the
23 immediate family of the victim, the amount of the loss suffered or
24 incurred by the victim as a result of the criminal conduct of the

1 offender, and the age, marital status, living arrangements,
2 financial obligations, income, family history and education, prior
3 juvenile and criminal records, prior abusive relationships, prior
4 sexual assaults, prior experiences being human trafficked,
5 associations with other persons convicted of a felony offense,
6 social history, indications of a predisposition to violence or
7 substance abuse, remorse or guilt about the offense or the harm to
8 the victim, job skills and employment history of the offender. The
9 Department shall make a report of information from such
10 investigation to the court, including a recommendation detailing the
11 punishment which is deemed appropriate for both the offense and the
12 offender, and specifically a recommendation for or against probation
13 or suspended sentence. The report of the investigation shall be
14 presented to the judge within a reasonable time, and upon failure to
15 present the report, the judge may proceed with sentencing.
16 Whenever, in the opinion of the court or the Department, it is
17 desirable, the investigation shall include a physical and mental
18 examination or either a physical or mental examination of the
19 offender.

20 E. The district attorney may have a presentence investigation
21 made by the Department on each person charged with a violent felony
22 offense and entering a plea of guilty or a plea of nolo contendere
23 as part of or in exchange for a plea agreement for a violent felony
24 offense. The presentence investigation shall be completed before

1 the terms of the plea agreement are finalized. The court shall not
2 approve the terms of any plea agreement without reviewing the
3 presentence investigation report to determine whether or not the
4 terms of the sentence are appropriate for both the offender and the
5 offense. The fee provided in subsection A of this section shall
6 apply to persons subject to this subsection and shall be a condition
7 of the plea agreement and sentence.

8 F. The presentence investigation reports specified in this
9 section shall not be referred to, or be considered, in any appeal
10 proceedings. Before imposing a sentence, the court shall advise the
11 defendant, counsel for the defendant, and the district attorney of
12 the factual contents and conclusions of the presentence
13 investigation report. The court shall afford the offender a fair
14 opportunity to controvert the findings and conclusions of the
15 reports at the time of sentencing. If either the defendant or the
16 district attorney desires, a hearing shall be set by the court to
17 allow both parties an opportunity to offer evidence proving or
18 disproving any finding contained in a report, which shall be a
19 hearing in mitigation or aggravation of punishment.

20 G. The required presentence investigation and report may be
21 waived upon written waiver by the district attorney and the
22 defendant and upon approval by the Court.

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

24 1. Arson in the first degree;

- 1 2. Assault with a dangerous weapon, battery with a dangerous
2 weapon or assault and battery with a dangerous weapon;
- 3 3. Aggravated assault and battery on a police officer, sheriff,
4 highway patrol officer, or any other officer of the law;
- 5 4. Assault with intent to kill, or shooting with intent to
6 kill;
- 7 5. Assault with intent to commit a felony, or use of a firearm
8 to commit a felony;
- 9 6. Assault while masked or disguised;
- 10 7. Burglary in the first degree or burglary with explosives;
- 11 8. Child beating or maiming;
- 12 9. Forcible sodomy;
- 13 10. Kidnapping, or kidnapping for extortion;
- 14 11. Lewd or indecent proposition or lewd or indecent acts with
15 a child;
- 16 12. Manslaughter in the first or second degrees;
- 17 13. Murder in the first or second degrees;
- 18 14. Rape in the first or second degrees, or rape by
19 instrumentation;
- 20 15. Robbery in the first or second degrees, or robbery by two
21 or more persons, or robbery with a dangerous weapon; or
- 22 16. Any attempt, solicitation or conspiracy to commit any of
23 the above enumerated offenses.
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SECTION 6. This act shall become effective November 1, 2023.

59-1-8031 GRS 03/20/23