

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 14, 2024

Mr. President:

Mr. Speaker

The Conference Committee, to which was referred

SB 1835

By. Treat and Gollihare of the Senate and Echols and Deck, et al of the House


Title: Sentencing; creating the Oklahoma Survivors' Act; sentencing and pleas; codification

_____ together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:


1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute (#3782) be adopted.

Respectfully submitted,

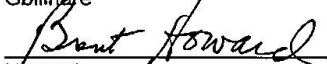
SENATE CONFEREES




Treat



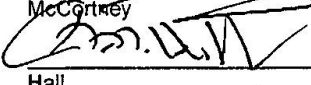
Gollihare




Howard



McCortney



Hall



Floyd

HOUSE CONFEREES

Special Conference Committee on SB 1835

Senate Action _____ Date _____ House Action _____ Date _____

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1835

By: Treat and Gollihare of the
Senate

6 and

7 Echols, Deck, McDugle,
8 Nichols, Roberts, and
9 Williams of the House

10 CONFERENCE COMMITTEE SUBSTITUTE

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

1 jurisdiction to district courts to consider motions;
2 and providing for codification.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

13 As used in this act:

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

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

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

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

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

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

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

12 A. During a hearing to:

13 1. Sentence a person; or

14 2. Accept a plea of guilty,

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

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

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

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

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

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

1 the defendant for financial gain, and that the violence or abuse was
2 related to and was a substantial contributing factor in causing the
3 defendant to commit the offense or to the defendant's criminal
4 behavior, the court shall depart from the applicable sentence to the
5 ranges provided as follows:

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

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

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

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

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

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

18 D. If the offense is one listed in Section 571 of Title 57 of
19 the Oklahoma Statutes, the defendant must prove by clear and
20 convincing evidence that either the victim was the perpetrator of
21 the domestic violence, physical, sexual, or psychological abuse by a
22 sexual partner, a family or household member, the trafficker of the
23 defendant, or a person who used the defendant for financial gain, or
24 the offense was coerced by the perpetrator.

1 E. The provisions of this section shall not apply to a person
2 convicted of:

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

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

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

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

11 5. An offense for which the person has received a sentence of
12 death.

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

16 Where a court has imposed a criminal judgment and sentence upon
17 a defendant other than for an offense described in subsection D of
18 Section 3 of this act and the defendant is serving the sentence in
19 the custody of the Department of Corrections, the court shall impose
20 a new, lesser sentence following a hearing if the court determines:

21 1. At the time of the offense for which the sentence is being
22 served, the defendant was a victim of domestic violence or subjected
23 to physical, sexual, or psychological abuse inflicted by a sexual
24 partner, a family member or member of the household, the trafficker

1 of the defendant, or any person who used the defendant for financial
2 gain; and

3 2. Such violence or abuse was related to and was a substantial
4 contributing factor in causing the defendant to commit the offense
5 for which he or she is presently in custody or to the defendant's
6 criminal behavior.

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

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

18 A. Any person who is:

19 1. Confined in an institution under the custody and control of
20 the Department of Corrections;

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

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

1 may, on or after the effective date of this act, submit to the judge
2 who imposed the original sentence a request to apply for
3 resentencing in accordance with the provisions of Section 3 of this
4 act. The person shall include in the request documentation showing
5 that he or she is confined in an institution under the custody and
6 control of the Department of Corrections and is serving a sentence
7 for an offense committed prior to the effective date of this act.
8 The person shall also declare that he or she is eligible for an
9 alternative sentence under the provisions of Section 3 of this act.

10 B. If the original sentencing judge is not serving on the court
11 in which the original sentence was imposed at the time of the
12 request to apply for resentencing, the request shall be randomly
13 assigned to a judge of the original sentencing court.

14 C. 1. If the court finds that the person has met the
15 requirements to apply for resentencing as provided in subsection A
16 of this section, the court shall provide notice to the person that
17 he or she may submit an application for resentencing. Upon such
18 notification, the person may request the court appoint an attorney
19 to assist the person in the preparation of and proceedings on the
20 application for resentencing.

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

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

4 E. If the judge that receives the application is not the judge
5 who originally sentenced the applicant, the application may be
6 referred to the original sentencing judge if he or she is serving as
7 a judge of a court of competent jurisdiction and the applicant and
8 the district attorney agree that the application should be referred.

9 F. An application for resentencing pursuant to this section
10 shall include evidence corroborating the claim of the applicant that
11 he or she was a victim of domestic violence or subjected to
12 physical, sexual, or psychological abuse inflicted by a sexual
13 partner, a family member or member of the household, the trafficker
14 of the applicant, or any person who used the applicant for financial
15 gain. At least one piece of evidence shall be a court record,
16 presentence report, social services record, hospital record, sworn
17 statement from a witness to the domestic violence who is not the
18 applicant, law enforcement record, domestic incident report, or
19 protective order. Other evidence may include but not be limited to
20 local jail records or records of the Department of Corrections,
21 documentation prepared at or near the time of the commission or
22 prosecution of the offense tending to support the claims of the
23 applicant, or verification of consultation with a licensed medical
24 care provider or mental health care provider, employee of a court

1 acting within the scope of his or her employment, member of the
2 clergy, attorney, social worker, rape crisis counselor, or other
3 advocate acting on behalf of an agency that assists victims of
4 domestic violence or abuse. Expert testimony from a psychiatrist,
5 psychologist, or mental health professional showing that the
6 applicant has been diagnosed with post-traumatic stress disorder may
7 also be submitted to the court.

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

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

1 Consideration of the institutional record of confinement of an
2 applicant by the court shall include, but not be limited to, the
3 participation of the applicant in programming such as domestic
4 violence, parenting, and substance abuse treatment while
5 incarcerated and the disciplinary history of the applicant. The
6 inability of the applicant to participate in treatment or other
7 programming while incarcerated despite the willingness of the
8 applicant to do so shall not be considered a negative factor when
9 the court is making its determination.

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

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

1 Sentences modified pursuant to the provisions of this section shall
2 be reduced as set forth in subsection C of Section 3 of this act.

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

- 6 1. An order denying resentencing; or
- 7 2. A new sentence imposed under the provisions of this section.

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

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

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

19 Notwithstanding any other provision of law concerning
20 postconviction relief, a district attorney in the jurisdiction in
21 which a person was convicted of an offense may file a motion in the
22 district court to vacate or set aside a judgment of conviction at
23 any time if clear and convincing evidence exists establishing that
24 the defendant was convicted of an offense that the defendant did not

1 commit. The district court shall have jurisdiction and authority to
2 consider, hear, and decide the motion.

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