

1 **SENATE FLOOR VERSION**

2 April 11, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 1639

6 By: Hasenbeck, Stark, Boatman,
7 Conley, Roberts, Bashore,
8 Lawson, Roe, Townley,
9 Schreiber, Munson, and Pae
10 of the House

11 and

12 Daniels of the Senate

13 [sentencing - Oklahoma Domestic Abuse Survivorship
14 Act - mitigating factors - documentary evidence -
15 discretion to depart from applicable sentences -
16 evaluation - annual education and training -
17 codification - effective date]

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

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

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

24 SECTION 2. 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:

As used in this act:

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

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

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

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

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

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

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

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

4 A. During a hearing to:

5 1. Sentence a person; or

6 2. Accept a plea of guilty,

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

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

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

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

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

14 C. If the court finds by a preponderance of the evidence that
15 the defendant is a survivor of domestic abuse within one (1) year
16 prior to or on the date of the offense by the person the defendant
17 defended his or herself against, then the court shall have the
18 discretion to depart from the applicable sentence. Furthermore, if
19 the defendant is pregnant at the time of sentencing, the court shall
20 be authorized to give due regard to such condition of the defendant
21 when departing from the applicable sentence.

22 D. Within seventy-two (72) hours after the arrest of a person
23 described in subsection A of this section, a psychological or
24 psychiatric evaluation routinely used by the Department of Mental

1 Health and Substance Abuse Services shall be administered to the
2 defendant. The evaluation shall be trauma-informed and take into
3 consideration possible common diagnoses for abuse victims such as
4 acute stress disorder and posttraumatic stress disorder. The
5 results of the evaluation shall be forwarded to the defendant and
6 submitted to the court as evidence. The Department shall conduct
7 the evaluation at no cost. Should the defendant choose to defer the
8 evaluation by the Department in favor of an evaluation conducted by
9 a private practitioner, the evaluation by the Department shall be
10 considered waived. It shall be the responsibility of the defendant
11 to bear the cost of any evaluation conducted by a private
12 practitioner.

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

16 A. Any district attorney, assistant district attorney, public
17 defender, assistant public defender, attorney employed by or under
18 contract with the Oklahoma Indigent Defense System, court-appointed
19 attorney, private defense attorneys, or attorney employed by or
20 under contract with a district court whose duties include domestic
21 violence responsibility shall complete at least three (3) hours of
22 education and training annually in courses relating to the topics
23 described in paragraph 1 of subsection A of this section. The
24 education and training requirements may be accomplished through a

1 collaborative effort between the judiciary and others with domestic
2 violence responsibilities.

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

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

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

23 B. Whenever a person has a prior felony conviction and enters a
24 plea of guilty or nolo contendere to a felony offense other than a

1 violent felony offense, without an agreement by the district
2 attorney regarding the sentence to be imposed, the court may order a
3 presentence investigation be made by the Department of Corrections.
4 The fee provided in subsection A of this section shall apply to
5 persons subject to this subsection.

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

12 D. When conducting a presentence investigation, the Department
13 shall inquire into the circumstances of the offense and the
14 characteristics of the offender. The information obtained from the
15 investigation shall include, but not be limited to, a voluntary
16 statement from each victim of the offense concerning the nature of
17 the offense and the impact of the offense on the victim and the
18 immediate family of the victim, the amount of the loss suffered or
19 incurred by the victim as a result of the criminal conduct of the
20 offender, and the age, marital status, living arrangements,
21 financial obligations, income, family history and education, prior
22 juvenile and criminal records, prior abusive relationships, prior
23 sexual assaults, prior experiences being human trafficked,
24 associations with other persons convicted of a felony offense,

1 social history, indications of a predisposition to violence or
2 substance abuse, remorse or guilt about the offense or the harm to
3 the victim, job skills and employment history of the offender. The
4 Department shall make a report of information from such
5 investigation to the court, including a recommendation detailing the
6 punishment which is deemed appropriate for both the offense and the
7 offender, and specifically a recommendation for or against probation
8 or suspended sentence. The report of the investigation shall be
9 presented to the judge within a reasonable time, and upon failure to
10 present the report, the judge may proceed with sentencing.

11 Whenever, in the opinion of the court or the Department, it is
12 desirable, the investigation shall include a physical and mental
13 examination or either a physical or mental examination of the
14 offender.

15 E. The district attorney may have a presentence investigation
16 made by the Department on each person charged with a violent felony
17 offense and entering a plea of guilty or a plea of nolo contendere
18 as part of or in exchange for a plea agreement for a violent felony
19 offense. The presentence investigation shall be completed before
20 the terms of the plea agreement are finalized. The court shall not
21 approve the terms of any plea agreement without reviewing the
22 presentence investigation report to determine whether or not the
23 terms of the sentence are appropriate for both the offender and the
24 offense. The fee provided in subsection A of this section shall

1 apply to persons subject to this subsection and shall be a condition
2 of the plea agreement and sentence.

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

15 G. The required presentence investigation and report may be
16 waived upon written waiver by the district attorney and the
17 defendant and upon approval by the Court.

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

19 1. Arson in the first degree;

20 2. Assault with a dangerous weapon, battery with a dangerous
21 weapon or assault and battery with a dangerous weapon;

22 3. Aggravated assault and battery on a police officer, sheriff,
23 highway patrol officer, or any other officer of the law;

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

20 SECTION 6. This act shall become effective November 1, 2023.

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
22 April 11, 2023 - DO PASS AS AMENDED
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