

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1639

By: Hasenbeck, Stark, Boatman,
Conley, Roberts, Bashore,
Lawson, Roe, Townley,
Schreiber, Munson and Pae
of the House

and

Daniels of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to sentencing; creating the Oklahoma Domestic Abuse Survivorship Act; defining terms; directing courts to consider certain mitigating factors during sentencing and pleas; requiring defendants to provide documentary evidence; providing the court the discretion to depart from applicable sentences; requiring certain attorneys to complete annual education and training; amending 22 O.S. 2021, Section 982, which relates to presentence investigations; expanding scope of circumstances; providing for codification; and providing an effective date.

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:

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

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

6 As used in this act:

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

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

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

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

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

24

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

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

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

11 A. During a hearing to:

12 1. Sentence a person; or

13 2. Accept a plea of guilty,

14 for a person who is a survivor of domestic abuse, and has been
15 charged with the crime against his or her intimate partner where
16 self-defense could have been raised as an affirmative defense, the
17 court shall consider as a mitigating factor that the person has been
18 abused physically, sexually, or psychologically by the person the
19 defendant defended himself or herself against, along with any other
20 mitigating or aggravating factors.

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 or within one (1) year prior to the

1 commission of the offense, a victim of domestic abuse, as such term
2 is defined in Section 2 of this act, perpetrated by the person the
3 defendant defended himself or herself against; and

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

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

22 C. If the court finds by a preponderance of the evidence that
23 the defendant is a survivor of domestic abuse within one (1) year
24 prior to or on the date of the offense by the person the defendant

1 defended himself or herself against, then the court shall have the
2 discretion to depart from the applicable sentence. Such findings of
3 fact shall be on the record after giving due regard to the evidence
4 submitted to the court by the defendant.

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

8 A. Any district attorney, assistant district attorney, public
9 defender, assistant public defender, attorney employed by or under
10 contract with the Oklahoma Indigent Defense System, court-appointed
11 attorney, private defense attorneys, or attorney employed by or
12 under contract with a district court whose duties include domestic
13 violence responsibility shall complete at least three (3) hours of
14 education and training annually in courses relating to the topics
15 described in paragraph 1 of subsection A of this section. The
16 education and training requirements may be accomplished through a
17 collaborative effort between the judiciary and others with domestic
18 violence responsibilities.

19 B. Each judicial district shall be responsible for developing
20 and administering procedures and rules for such courses for
21 attorneys identified in paragraph 1 of this subsection whose duties
22 routinely include domestic violence responsibilities. The chief
23 judge of each judicial district, or any designee judge with domestic
24

1 violence case responsibilities, shall carry out this mandate within
2 one (1) year of the effective date of this act.

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

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

16 B. Whenever a person has a prior felony conviction and enters a
17 plea of guilty or nolo contendere to a felony offense other than a
18 violent felony offense, without an agreement by the district
19 attorney regarding the sentence to be imposed, the court may order a
20 presentence investigation be made by the Department of Corrections.
21 The fee provided in subsection A of this section shall apply to
22 persons subject to this subsection.

23 C. Whenever a person has entered a plea of not guilty to a
24 nonviolent felony offense and is found guilty by a court following a

1 non-jury trial, the court may require a presentence investigation be
2 made by the Department of Corrections. The fee provided in
3 subsection A of this section shall apply to persons subject to this
4 subsection.

5 D. When conducting a presentence investigation, the Department
6 shall inquire into the circumstances of the offense and the
7 characteristics of the offender. The information obtained from the
8 investigation shall include, but not be limited to, a voluntary
9 statement from each victim of the offense concerning the nature of
10 the offense and the impact of the offense on the victim and the
11 immediate family of the victim, the amount of the loss suffered or
12 incurred by the victim as a result of the criminal conduct of the
13 offender, and the age, marital status, living arrangements,
14 financial obligations, income, family history and education, prior
15 juvenile and criminal records, prior abusive relationships, prior
16 sexual assaults, prior experiences being human trafficked,
17 associations with other persons convicted of a felony offense,
18 social history, indications of a predisposition to violence or
19 substance abuse, remorse or guilt about the offense or the harm to
20 the victim, job skills and employment history of the offender. The
21 Department shall make a report of information from such
22 investigation to the court, including a recommendation detailing the
23 punishment which is deemed appropriate for both the offense and the
24 offender, and specifically a recommendation for or against probation

1 or suspended sentence. The report of the investigation shall be
2 presented to the judge within a reasonable time, and upon failure to
3 present the report, the judge may proceed with sentencing.

4 Whenever, in the opinion of the court or the Department, it is
5 desirable, the investigation shall include a physical and mental
6 examination or either a physical or mental examination of the
7 offender.

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

20 F. The presentence investigation reports specified in this
21 section shall not be referred to, or be considered, in any appeal
22 proceedings. Before imposing a sentence, the court shall advise the
23 defendant, counsel for the defendant, and the district attorney of
24 the factual contents and conclusions of the presentence

1 investigation report. The court shall afford the offender a fair
2 opportunity to controvert the findings and conclusions of the
3 reports at the time of sentencing. If either the defendant or the
4 district attorney desires, a hearing shall be set by the court to
5 allow both parties an opportunity to offer evidence proving or
6 disproving any finding contained in a report, which shall be a
7 hearing in mitigation or aggravation of punishment.

8 G. The required presentence investigation and report may be
9 waived upon written waiver by the district attorney and the
10 defendant and upon approval by the Court.

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

12 1. Arson in the first degree;

13 2. Assault with a dangerous weapon, battery with a dangerous
14 weapon or assault and battery with a dangerous weapon;

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

17 4. Assault with intent to kill, or shooting with intent to
18 kill;

19 5. Assault with intent to commit a felony, or use of a firearm
20 to commit a felony;

21 6. Assault while masked or disguised;

22 7. Burglary in the first degree or burglary with explosives;

23 8. Child beating or maiming;

24 9. Forcible sodomy;

- 1 10. Kidnapping, or kidnapping for extortion;
- 2 11. Lewd or indecent proposition or lewd or indecent acts with
- 3 a child;
- 4 12. Manslaughter in the first or second degrees;
- 5 13. Murder in the first or second degrees;
- 6 14. Rape in the first or second degrees, or rape by
- 7 instrumentation;
- 8 15. Robbery in the first or second degrees, or robbery by two
- 9 or more persons, or robbery with a dangerous weapon; or
- 10 16. Any attempt, solicitation or conspiracy to commit any of
- 11 the above enumerated offenses.

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

13

14 59-1-8400 GRS 05/18/23

15

16

17

18

19

20

21

22

23

24