

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1835 By: Gollihare of the Senate  
3 and  
4 Echols of the House  
5

6  
7 An Act relating to postconviction relief; authorizing  
8 motion to vacate judgment of conviction under certain  
9 circumstances; granting jurisdiction to consider  
10 certain motion; providing for codification; and  
11 declaring an emergency.

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14 AUTHOR: Add the following House Coauthor: Deck

15 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill  
16 and insert:

17  
18 "An Act relating to sentencing; creating the Oklahoma  
19 Survivors' Act; providing short title; defining  
20 terms; directing courts to consider certain  
21 mitigating factors during sentencing and pleas;  
22 requiring defendants to provide certain evidence;  
23 allowing courts the discretion to depart from  
24 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 specific information when

1 making request; providing jurisdictional  
2 requirements; providing notice procedures when  
3 granting or denying requests; allowing defendants to  
4 request the appointment of counsel; directing court  
5 clerks to send notification to the appropriate  
6 district attorney; requiring the inclusion of certain  
7 evidence with applications; providing for denial of  
8 applications; establishing hearing procedures upon  
9 approval of applications; providing notice procedures  
10 for orders issued by the court; providing for the  
11 appeal of orders; allowing applicants to request the  
12 appointment of counsel; requiring time served to be  
13 credited toward sentence; authorizing district  
14 attorneys to file motions to vacate judgment of  
15 convictions under certain circumstances; granting  
16 jurisdiction to district courts to consider motions;  
17 and providing for codification.

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 1090.1 of Title 22, unless there  
21 is created a duplication in numbering, reads as follows:

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

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

As used in this act:

1. "Domestic violence" means any act of physical harm or the  
threat of imminent physical harm which is committed by an adult,  
emancipated minor, or minor child thirteen (13) years of age or

1 older against another adult, emancipated minor, or minor child who  
2 is currently or was previously an intimate partner or family or  
3 household member;

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

6 3. "Post-traumatic stress disorder" means the same as such term  
7 is defined in the Diagnostic and Statistical Manual of Mental  
8 Disorders, Fifth Edition (DSM-5, 2013), and occurred as a result of  
9 the victimization of a survivor related to the violence or abuse;

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

13 5. "Sentencing hearing" means a postconviction hearing in which  
14 the defendant is brought before the court for imposition of a  
15 sentence.

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

19 A. During a hearing to:

20 1. Sentence a person; or

21 2. Accept a plea of guilty,

22 for a person who is a survivor of domestic violence and has been  
23 charged with a crime, the court shall consider as a mitigating  
24 factor that the person has been abused physically, sexually, or

1 psychologically by the person's sexual partner, family member or  
2 member of the household, the trafficker of the person, or other  
3 individual who used the person for financial gain.

4 B. The defendant shall provide to the court evidence including  
5 but not limited to:

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

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

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

1 violence or abuse at issue may also be submitted to the court as  
2 evidence.

3 C. If the court finds by clear and convincing evidence that at  
4 the time of the offense the defendant was a survivor of domestic  
5 violence or subjected to physical, sexual, or psychological abuse  
6 inflicted by a sexual partner, a family member or member of the  
7 household, the trafficker of the defendant, or any person who used  
8 the defendant for financial gain, and that the violence or abuse was  
9 related to and was a substantial contributing factor in causing the  
10 defendant to commit the offense or to the defendant's criminal  
11 behavior, the court shall depart from the applicable sentence to the  
12 ranges provided as follows:

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 D. 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."

3 Passed the House of Representatives the 22nd day of April, 2024.

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Presiding Officer of the House of  
Representatives

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8 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2024.

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Presiding Officer of the Senate

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1 ENGROSSED SENATE  
2 BILL NO. 1835

By: Gollihare of the Senate

3 and

4 Echols of the House

5  
6 An Act relating to postconviction relief; authorizing  
7 motion to vacate judgment of conviction under certain  
8 circumstances; granting jurisdiction to consider  
9 certain motion; providing for codification; and  
10 declaring an emergency.

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

12 SECTION 7. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1381 of Title 22, unless there  
14 is created a duplication in numbering, reads as follows:

15 Notwithstanding any other provision of law concerning  
16 postconviction relief, a district attorney in the jurisdiction in  
17 which a person was convicted of an offense may file a motion in the  
18 district court to vacate or set aside a judgment of conviction at  
19 any time if clear and convincing evidence exists establishing that  
20 the defendant was convicted of an offense that the defendant did not  
21 commit. The district court shall have jurisdiction and authority to  
22 consider, hear, and decide the motion.

23 SECTION 8. It being immediately necessary for the preservation  
24 of the public peace, health or safety, an emergency is hereby

