

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1639

6 By: Hasenbeck

7 COMMITTEE 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 sentencing ranges upon finding by the
14 court; requiring the administration of an evaluation;
15 authorizing submission of results to the defendant
16 and the court; assigning responsibility of cost of
17 evaluations; allowing certain persons to make
18 application for sentencing relief; authorizing the
19 Court of Criminal Appeals to develop and disseminate
20 standard application form; stating absence of a
21 limitation period when applying for relief; providing
22 guidelines for when persons may apply for relief;
23 providing procedures for filing applications; stating
24 types of documentary evidence necessary for
consideration; providing for the filing of
applications without costs under certain
circumstances; allowing the state to object upon
showing of certain evidence; providing for the
dismissal of applications; authorizing courts to
grant leave to file amendment applications;
authorizing courts to grant certain motion; providing
for sentencing review hearings; stating procedures
for hearings; providing sentencing ranges upon
finding by the court; providing procedures for
amending judgment and sentences; establishing
restrictions on subsequent applications; allowing
amended judgment and sentences to be appealed;
stating requirement for appeals; directing the
Supreme Court to establish education and training
requirements; providing guidelines for rules;

1 requiring certain attorneys to complete annual
2 education and training; amending 22 O.S. 2021,
3 Section 982, which relates to presentence
4 investigations; expanding scope of circumstances;
5 providing for codification; and providing an
6 effective date.

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

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

11 Sections 1 through 13 of this act shall be known and may be
12 cited as the "Oklahoma Domestic Abuse Survivorship Act".

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

16 As used in this act:

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

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

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

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

4 4. "Economic abuse" means any behavior that has a substantial
5 and adverse effect on the ability of an individual to:

- 6 a. acquire, use, or maintain money or other property,
- 7 b. obtain goods including, but not limited to, food and
8 clothing, or
- 9 c. obtain services including, but not limited to,
10 utilities;

11 5. "Parole" means a conditional release of an offender who has
12 served part of the term for which he or she was sentenced to prison;

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

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

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

22 9. "Revocation hearing" means a type of hearing as provided in
23 Section 991b of Title 22 of the Oklahoma Statutes;

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1 10. "Sentencing hearing" means a type of postconviction hearing
2 in which the defendant is brought before the court for imposition of
3 the sentence; and

4 11. "Suspended sentence" means a type of sentence as provided
5 in Section 991a of Title 22 of the Oklahoma Statutes.

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, economically, or psychologically by the
17 person the 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 sentencing range for the
23 defendant shall be as follows:
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- 1 1. If the offense carries up to five (5) years, not more than
2 three (3) years;
- 3 2. If the offense carries up to ten (10) years, not more than
4 five (5) years; or
- 5 3. If the offense carries up to twenty (20) years, not more
6 than seven (7) years.

7 No matter the range for the offense, a defendant providing
8 mitigation evidence under this section shall not receive a sentence
9 longer than ten (10) years.

10 D. Prior to sentencing a person pursuant to the provisions of
11 this act, a psychological or psychiatric evaluation routinely used
12 by the Department of Mental Health and Substance Abuse Services
13 shall be administered to the defendant. The evaluation shall be
14 trauma-informed and take into consideration possible common
15 diagnoses for abuse victims such as acute stress disorder and
16 posttraumatic stress disorder. The results of the evaluation shall
17 be forwarded to the defendant and submitted to the court as
18 evidence. The Department shall conduct the evaluation at no cost.
19 Should the defendant choose to defer the evaluation by the
20 Department in favor of an evaluation conducted by a private
21 practitioner, the evaluation by the Department shall be considered
22 waived. It shall be the responsibility of the defendant to bear the
23 cost of any evaluation conducted by a private practitioner.

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

4 A. Any person who has been convicted or received a sentence for
5 a crime against his or her intimate partner where self-defense could
6 have been raised as an affirmative defense and the abuse was
7 perpetrated by the person the defendant was defending his or herself
8 against and who claims:

9 1. That he or she was a victim of domestic abuse, as defined in
10 Section 2 of this act, at the time of the criminal offense or within
11 one (1) year leading up to the criminal offense perpetrated by the
12 person the defendant defended his or herself against;

13 2. That the aforementioned domestic abuse was substantially
14 related to the commission of the offense; or

15 3. That the sentence previously imposed does not serve the
16 means of justice when considering the mitigating evidence of
17 physical, sexual, or psychological abuse,
18 may make an application to the court in which the judgment and
19 sentence of the person was imposed. Upon receiving the application,
20 the court shall institute a proceeding to secure the appropriate
21 sentencing relief. The Court of Criminal Appeals shall be
22 authorized to develop and disseminate a standard form for an
23 application in conformity with the provisions of this section.

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1090.4 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A. No period of limitation shall apply to the filing of any
5 application seeking sentencing relief, whether an original
6 application or a subsequent application.

7 B. For those seeking to submit an application after revocation
8 of a suspended sentence, acceleration of a deferred sentence, or
9 revocation of probation, the person may submit the application once
10 the person has been processed into the custody of the Department of
11 Corrections only if the person did not invoke the mitigation
12 procedures outlined in Section 3 of this act during or after the
13 revocation hearing.

14 C. For those seeking to submit an application after revocation
15 of parole or conditional release, the person may submit the
16 application once the person has been processed into the Department
17 of Corrections only if the person did not invoke the mitigation
18 procedures outlined in Section 3 of this act during or after the
19 revocation hearing.

20 D. The provisions of this section shall apply to any
21 application filed on or after the effective date of this act.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1090.5 of Title 22, unless there
24 is created a duplication in numbering, reads as follows:

1 A. A proceeding is commenced by filing an application for
2 sentencing review with the clerk of the court imposing judgment if
3 an appeal is not pending. When such a proceeding arises from the
4 revocation of parole or conditional release, the proceeding shall be
5 commenced by filing an application with the clerk of the court in
6 the county in which the parole or conditional release was revoked.
7 Facts within the personal knowledge of the applicant and the
8 authenticity of all documents and exhibits included in or attached
9 to the application shall be sworn to be true and correct. The clerk
10 of the court shall docket the application upon its receipt, promptly
11 notify the court, and deliver a copy to the district attorney.

12 B. A valid application for consideration will show by a
13 preponderance of the evidence, including but not limited to
14 documentary evidence, corroborating that the applicant:

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

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

1 Corrections, documentation prepared at or near the time of the
2 commission of the offense or the prosecution thereof tending to
3 support the claims of the person, or verification of consultation
4 with a licensed medical care provider or mental health care
5 provider, employee of a court acting within the scope of his or her
6 employment, member of the clergy, attorney, social worker, or rape
7 crisis counselor, or other advocate acting on behalf of an agency
8 that assists victims of domestic abuse. Expert testimony from a
9 psychiatrist, psychologist, or mental health professional showing
10 that the defendant has been diagnosed with posttraumatic stress
11 disorder may also be submitted to the court as evidence.

12 SECTION 7. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1090.6 of Title 22, unless there
14 is created a duplication in numbering, reads as follows:

15 If the applicant is unable to pay court costs and expenses of
16 representation, the applicant shall include an affidavit to that
17 effect with the application, which shall then be filed without
18 costs. Counsel necessary in representation shall be made available
19 to the applicant upon filing the application and a finding by the
20 court that such assistance is necessary to provide a fair
21 determination of sentencing relief. If an attorney is appointed to
22 represent such an applicant then the fees and expenses of such
23 attorney shall be paid from the court fund. The attorney, if
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1 appointed, shall be employed by the respective county's indigent
2 defense agency.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1090.7 of Title 22, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Within thirty (30) days after the docketing of the
7 application, the state may file an objection if the state has
8 evidence that directly controverts the evidence of abuse submitted
9 by the applicant or evidence that provides additional context to the
10 battering relationship. In considering the application, the court
11 shall take account of the substance of the application, regardless
12 of any defects of form. The court may also allow affidavits for
13 good cause shown. Depositions may be employed only when there is no
14 other means of obtaining testimony.

15 B. When a court is satisfied, on the basis of the application,
16 the answer or motion of respondent, and the record, that the
17 applicant is not entitled to sentencing review and no purpose would
18 be served by any further proceedings, the court shall order the
19 application dismissed or grant leave to file an amended application.
20 Where such evidence exists in the record, an evidentiary hearing
21 shall be ordered. The judge assigned to the case should not dispose
22 of it on the basis of information within his or her personal
23 knowledge not made a part of the record.

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1 C. The court may grant a motion by the state for summary
2 disposition of the application when it appears from the response and
3 pleadings that there is no genuine basis for seeking a sentencing
4 review. An order disposing of an application without a hearing
5 shall state the findings and conclusions of the court regarding the
6 issues presented.

7 SECTION 9. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1090.8 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 A. If the applicant meets the evidentiary burden in the
11 pleadings, the court shall conduct a sentencing review hearing at
12 which time a record shall be made and preserved. The court may
13 receive proof by affidavits, depositions, oral testimony, or other
14 evidence and may order the applicant to be brought before the court
15 for the hearing. Any live testimony shall be subject to direct and
16 cross examination. The state may present evidence only if it
17 directly controverts the evidence of abuse offered by the applicant,
18 or evidence that provides additional context to the battering
19 relationship. A judge should not preside at such a hearing if his
20 or her testimony is material. The court shall make specific
21 findings of fact regarding whether or not the applicant was a
22 survivor of domestic abuse at the time of the criminal offense or
23 within one (1) year prior to the offense and that the abuse was
24 perpetrated by the person the defendant defended his or herself

1 against. If the court finds by a preponderance of the evidence that
2 the applicant is a survivor of domestic abuse, then the new
3 sentencing range for the defendant shall be:

4 1. If the offense carries up to five (5) years, not more than
5 three (3) years;

6 2. If the offense carries up to ten (10) years, not more than
7 five (5) years; or

8 3. If the offense carries up to twenty (20) years, not more
9 than seven (7) years.

10 No matter the range for the offense, an applicant that meets the
11 evidentiary burden by a preponderance of the evidence under this
12 section shall not receive a sentence longer than ten (10) years.

13 B. The court shall amend the judgment and sentence of the
14 applicant to the new sentence. The order issued by the court shall
15 be a final judgment.

16 SECTION 10. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1090.9 of Title 22, unless there
18 is created a duplication in numbering, reads as follows:

19 If the court finds in the affirmative that the applicant was a
20 survivor of domestic abuse at the time of the criminal offense or
21 within one year prior to the offense and that the abuse was
22 perpetrated by the person the defendant defended his or herself
23 against, the court shall amend the judgment and sentence to reflect
24 a new sentence consistent with that provided in Section 9 of this

1 act. If the amended sentence reflects less time than the applicant
2 has already served in the custody of the Department of Corrections,
3 then the court shall also issue an order of discharge for the
4 applicant. The court shall enter any supplementary orders as to
5 time served, custody, bail, discharge, or other matters that may be
6 necessary and proper.

7 SECTION 11. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1090.10 of Title 22, unless
9 there is created a duplication in numbering, reads as follows:

10 All grounds for sentencing relief available to an applicant
11 under the provisions of this act, shall be raised in his or her
12 original or amended application. Any ground previously adjudicated
13 or not raised or knowingly, voluntarily and intelligently waived in
14 the proceeding that resulted in the conviction or sentence, or in
15 any other proceeding the applicant has taken to secure relief, may
16 not be the basis for a subsequent application.

17 SECTION 12. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1090.11 of Title 22, unless
19 there is created a duplication in numbering, reads as follows:

20 A. A denied application or an amended judgment and sentence
21 entered under the provisions of this act may be appealed to the
22 Court of Criminal Appeals by the applicant or the state within
23 thirty (30) days from the entry of the amended judgment and
24 sentence.

1 B. Upon motion of either party on filing a notice of intent to
2 appeal, within ten (10) days of entering the amended judgment and
3 sentence, the district court may stay the execution of the amended
4 judgment and sentence pending disposition on appeal; provided,
5 however, the Court of Criminal Appeals may direct the vacation of
6 the order staying the execution prior to final disposition of the
7 appeal.

8 SECTION 13. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1090.12 of Title 22, unless
10 there is created a duplication in numbering, reads as follows:

11 A. 1. The Supreme Court is required to establish by rule,
12 education and training requirements for judges, associate judges,
13 special judges, and referees who preside over cases dealing with
14 domestic violence. Rules shall include, but not be limited to,
15 education and training relating to domestic abuse, coercive control,
16 trauma, posttraumatic stress disorder, battered woman syndrome,
17 survivor use of force, mental health treatment, and other similar
18 topics.

19 2. All judges who preside over cases dealing with domestic
20 violence shall attend at least three (3) hours of training in such
21 courses each calendar year relating to the topics described in
22 paragraph 1 of this subsection.

23 3. The Administrative Director of the Courts shall be
24 responsible for developing and administering procedures and rules

1 for such courses for judicial personnel, including monitoring the
2 attendance of judicial personnel at such training.

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

14 2. Each judicial district shall be responsible for developing
15 and administering procedures and rules for such courses for
16 attorneys identified in paragraph 1 of this subsection whose duties
17 routinely include domestic violence responsibilities. The chief
18 judge of each judicial district, or any designee judge with domestic
19 violence case responsibilities, shall carry out this mandate within
20 one (1) year of the effective date of this act.

21 SECTION 14. AMENDATORY 22 O.S. 2021, Section 982, is
22 amended to read as follows:

23 Section 982. A. Whenever a person is convicted of a violent
24 felony offense whether the conviction is for a single offense or

1 part of any combination of offenses, except when the death sentence
2 is available as punishment for the offense, the court may, before
3 imposing the sentence, require a presentence investigation be made
4 of the offender by the Department of Corrections. The court shall
5 order the defendant to pay a fee to the Department of Corrections of
6 not less than Fifty Dollars (\$50.00) nor more than Five Hundred
7 Dollars (\$500.00) for the presentence investigation. In hardship
8 cases, the court may reduce the amount of the fee and establish a
9 payment schedule.

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

17 C. Whenever a person has entered a plea of not guilty to a
18 nonviolent felony offense and is found guilty by a court following a
19 non-jury trial, the court may require a presentence investigation be
20 made by the Department of Corrections. The fee provided in
21 subsection A of this section shall apply to persons subject to this
22 subsection.

23 D. When conducting a presentence investigation, the Department
24 shall inquire into the circumstances of the offense and the

1 characteristics of the offender. The information obtained from the
2 investigation shall include, but not be limited to, a voluntary
3 statement from each victim of the offense concerning the nature of
4 the offense and the impact of the offense on the victim and the
5 immediate family of the victim, the amount of the loss suffered or
6 incurred by the victim as a result of the criminal conduct of the
7 offender, and the age, marital status, living arrangements,
8 financial obligations, income, family history and education, prior
9 juvenile and criminal records, prior abusive relationships, prior
10 sexual assaults, prior experiences being human trafficked,
11 associations with other persons convicted of a felony offense,
12 social history, indications of a predisposition to violence or
13 substance abuse, remorse or guilt about the offense or the harm to
14 the victim, job skills and employment history of the offender. The
15 Department shall make a report of information from such
16 investigation to the court, including a recommendation detailing the
17 punishment which is deemed appropriate for both the offense and the
18 offender, and specifically a recommendation for or against probation
19 or suspended sentence. The report of the investigation shall be
20 presented to the judge within a reasonable time, and upon failure to
21 present the report, the judge may proceed with sentencing.
22 Whenever, in the opinion of the court or the Department, it is
23 desirable, the investigation shall include a physical and mental

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1 examination or either a physical or mental examination of the
2 offender.

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

15 F. The presentence investigation reports specified in this
16 section shall not be referred to, or be considered, in any appeal
17 proceedings. Before imposing a sentence, the court shall advise the
18 defendant, counsel for the defendant, and the district attorney of
19 the factual contents and conclusions of the presentence
20 investigation report. The court shall afford the offender a fair
21 opportunity to controvert the findings and conclusions of the
22 reports at the time of sentencing. If either the defendant or the
23 district attorney desires, a hearing shall be set by the court to
24 allow both parties an opportunity to offer evidence proving or

1 disproving any finding contained in a report, which shall be a
2 hearing in mitigation or aggravation of punishment.

3 G. The required presentence investigation and report may be
4 waived upon written waiver by the district attorney and the
5 defendant and upon approval by the Court.

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

7 1. Arson in the first degree;

8 2. Assault with a dangerous weapon, battery with a dangerous
9 weapon or assault and battery with a dangerous weapon;

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

12 4. Assault with intent to kill, or shooting with intent to
13 kill;

14 5. Assault with intent to commit a felony, or use of a firearm
15 to commit a felony;

16 6. Assault while masked or disguised;

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

18 8. Child beating or maiming;

19 9. Forcible sodomy;

20 10. Kidnapping, or kidnapping for extortion;

21 11. Lewd or indecent proposition or lewd or indecent acts with
22 a child;

23 12. Manslaughter in the first or second degrees;

24 13. Murder in the first or second degrees;

1 14. Rape in the first or second degrees, or rape by
2 instrumentation;

3 15. Robbery in the first or second degrees, or robbery by two
4 or more persons, or robbery with a dangerous weapon; or

5 16. Any attempt, solicitation or conspiracy to commit any of
6 the above enumerated offenses.

7 SECTION 15. This act shall become effective November 1, 2023.

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