

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)  
CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 745

By: Gustafson of the Senate

and

Davis and Hastings of the  
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 982, as amended by Section 1, Chapter 319, O.S.L. 1992 (22 O.S. Supp. 1996, Section 982), which relates to presentence investigation reports; requiring presentence investigations under certain circumstances; modifying certain fees; modifying contents of certain reports; prohibiting waiver of investigations under certain circumstances; defining term; amending 57 O.S. 1991, Section 95, which relates to delivery of sentenced person by sheriff; requiring delivery of certain reports; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 982, as amended by Section 1, Chapter 319, O.S.L. 1992 (22 O.S. Supp. 1996, Section 982), is amended to read as follows:

Section 982. A. Whenever a person is convicted of a violent felony offense whether the conviction is for a single offense or part of any combination of offenses, except when the death sentence is ~~imposed~~ available as punishment for the offense, the court shall, before imposing the sentence ~~to commit any felon to incarceration by the Department of Corrections~~, order require a presentence investigation to be made of the offender by the Department of Corrections. The court may order a presentence investigation to be conducted by the Department on any convicted felony offender prior to the court imposing a term of incarceration in the custody of the Department. The court ~~may~~ shall order the defendant to pay a fee to the Department of

Corrections of not to exceed less than Five Dollars (\$5.00), nor more than Two Hundred Fifty Dollars (\$250.00) for the presentence investigation, if in the opinion of the court the defendant has the ability to pay such fee. In hardship cases, the court shall set the amount of the fee and establish a payment schedule.

B. The Department shall, when conducting a presentence investigation, inquire into the circumstances of the offense and the characteristics of the offender. This The information obtained from the investigation shall include, but shall not be limited to, a voluntary statement of the from each victim of the offense concerning the nature of the offense and the impact of the offense on the victim and the victim's immediate family, the amount of the loss of suffered or incurred by the victim as a result of the criminal conduct of the offender, and the offender's age, marital status, living arrangements, financial obligations, income, family history, education, prior juvenile and criminal record records, associations with other persons convicted of a felony offense, social history and present condition of the convicted person, indications of a predisposition to violence or substance abuse, remorse or guilt about the offense or the victim's harm, job skills, and employment history. The Department shall make a report of information from such investigation to the court, including a recommendation as to detailing the punishment which is deemed appropriate sentence for both the offense and the offender, and specifically a recommendation for or against probation or suspended sentence. Such reports must The report of the investigation shall be presented to the judge so requesting, within a reasonable time, and upon the failure to so present the same report, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Department, it is desirable, the investigation shall include a physical and mental examination or either a physical or mental examination of the convicted person offender.

C. The district attorney shall have a presentence investigation made by the Department on each person charged with a violent felony offense and entering a plea of guilty or a plea of

nolo contendere as part of or in exchange for a plea agreement for a felony offense. The presentence investigation shall be completed before the terms of the plea agreement are finalized. The court shall not approve the terms of any plea agreement without reviewing the presentence investigation report to determine whether or not the terms of the sentence are appropriate for both the offender and the offense. The fee provided in subsection A of this section shall apply to persons subject to this subsection and shall be a condition of the plea agreement and sentence.

D. The presentence investigation reports ~~so received by the court specified in this section~~ shall not be referred to, or be considered, in any appeal proceedings. Before imposing a sentence, the court shall advise the defendant ~~or his,~~ the defendant's counsel, and the district attorney of the factual contents and ~~the~~ conclusions of ~~any the~~ presentence investigation ~~or psychiatric examination and report.~~ The court shall afford the offender a fair opportunity, ~~if the defendant so requests,~~ to controvert ~~them~~ the findings and conclusions of the reports at the time of sentencing. If either the defendant or the district attorney desires, ~~such~~ a hearing shall be ~~ordered~~ set by the court ~~providing either party to allow both parties~~ an opportunity to offer evidence proving or disproving any finding contained in ~~such~~ a report, which shall be a hearing in mitigation or aggravation of punishment.

~~D.—If~~ E. ~~Neither~~ the district attorney ~~and~~ nor the defendant ~~desire shall be allowed to waive such the required~~ presentence investigation and report, ~~both shall execute a suitable waiver subject to approval of the court, whereupon the judge shall proceed with the sentencing.~~

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

1. Arson in the first degree;
2. Assault with a dangerous weapon, battery with a dangerous weapon or assault and battery with a dangerous weapon;
3. Aggravated assault and battery on a police officer, sheriff, highway patrol officer, or any other officer of the law;

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

SECTION 2. AMENDATORY 57 O.S. 1991, Section 95, is amended to read as follows:

Section 95. A. Any person convicted of an offense against the laws of this state and sentenced to imprisonment that is not to be served in a county jail shall be transported by the sheriff of the county where ~~said~~ the person is sentenced, or ~~the~~ transported by a designated representative of the sheriff, to the Department of Corrections at the Lexington Assessment and Reception Center. The sheriff shall deliver ~~such~~ the person to the Department at such center together with a certified copy of the judgment and sentence ~~of~~ from the court ordering such imprisonment ~~to the Department of Corrections at such center~~ and ~~the~~ a copy of the presentence investigation report, if a report was prepared.

B. The Department shall give the sheriff a receipt for each ~~prisoner~~ person received into the custody of the Department at the Lexington Assessment and Reception Center. The receipt shall be

filed by the sheriff in the office of the clerk of the court where the sentence was made.

SECTION 3. This act shall become effective July 1, 1997.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-1436

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