

SHORT TITLE: Criminal procedure; requiring certain offenses be imposed as concurrent sentences; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 745

By: Gustafson

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 976 and 982, as amended by Section 1, Chapter 319, O.S.L. 1992 (22 O.S. Supp. 1996, Section 982), which relate to sentencing on multiple offenses and presentence investigation reports; requiring certain offenses be imposed as concurrent sentences; limiting authority for consecutive sentences; requiring presentence investigations for felony offenses; prohibiting waiving presentence investigation or report; requiring presentence investigation for plea agreements and prior to any sentencing; authorizing certain fee; providing for hardship cases; providing authority for payment schedule for certain fee; expanding content of certain report; declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 976, is amended to read as follows:

Section 976. If the defendant has been convicted of two or more felony offenses of which one or more is a violent felony offense, before judgment on either, the judgment may be that the imprisonment upon any one offense may commence at the expiration of the

imprisonment upon any other of the offenses. Provided, that the sentencing judge shall, at all times, have the discretion to enter a sentence concurrent with any other sentence.

If the defendant has been convicted of two or more nonviolent felony offenses, before judgment on either, the judgment shall be that the imprisonment upon any one offense shall be served concurrent with the imprisonment of any other of the offenses.

SECTION 2. 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 felony offense, except when the death sentence is ~~imposed~~ required 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~~ 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, indications of a predisposition to violence or
substance abuse, remorse or guilt about the offense or the victim's
harm, job skills, employment history, and the present physical and
mental condition of the ~~convicted person~~ offender. 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 community placement. ~~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 on each person 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~~ report, and, if a physical or psychiatric examination and was conducted, of the conclusions of the examinations. 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.~~

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

46-1-0806

NP