

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1272

By: Ericson

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 982, as last amended by Section 1, Chapter 328, O.S.L 1997 (22 O.S. Supp. 2000, Section 982), which relates to presentence investigations; eliminating requirement for punishment recommendation; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 982, as last amended by Section 1, Chapter 328, O.S.L. 1997 (22 O.S. Supp. 2000, 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 available as punishment for the offense, the court shall, before imposing the sentence, require a presentence investigation 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 shall order the defendant to pay a fee to the Department of Corrections of not less than Five Dollars (\$5.00), nor more than Two Hundred Fifty Dollars (\$250.00) for the presentence investigation. 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. The information obtained from the investigation shall include, but shall not be limited to, a voluntary statement 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 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 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, and employment history. The Department shall make a report of information from such investigation to the court, ~~including a recommendation detailing the punishment which is deemed appropriate for both the offense and the offender, and specifically a recommendation for or against probation or suspended sentence.~~ The report of the investigation shall be presented to the judge within a reasonable time, and upon failure to present the 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 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 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, the defendant's counsel, and the district attorney of the factual contents and conclusions of the presentence investigation report. The court shall afford the offender a fair opportunity to controvert the findings and conclusions of the reports at the time of sentencing. If either the defendant or the district attorney desires, a hearing shall be set by the court to allow both parties an opportunity to offer evidence proving or disproving any finding contained in a report, which shall be a hearing in mitigation or aggravation of punishment.

E. Neither the district attorney nor the defendant shall be allowed to waive the required presentence investigation and report.

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. This act shall become effective November 1, 2001.

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