

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 1081

6 By: Bennett

7 COMMITTEE SUBSTITUTE

8 An Act relating to criminal procedure; amending 22  
9 O.S. 2001, Section 982, as amended by Section 18,  
10 Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2010, Section  
11 982), which relates to presentence investigations;  
12 modifying requirements for presentence  
13 investigations; directing courts to consider  
14 treatment recommendations for certain offenders; and  
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 22 O.S. 2001, Section 982, as  
18 amended by Section 18, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2010,  
19 Section 982), is amended to read as follows:

20 Section 982. A. Whenever a person is convicted of a violent  
21 felony offense whether the conviction is for a single offense or  
22 part of any combination of offenses, except when the death sentence  
23 is available as punishment for the offense, the court shall, before  
24 imposing the sentence, require a presentence investigation be made  
of the offender by the Department of Corrections. The court may

1 order a presentence investigation to be conducted by the Department  
2 on any convicted felony offender prior to the court imposing a term  
3 of incarceration in the custody of the Department. The court shall  
4 order the ~~defendant~~ offender to pay a fee to the Department of  
5 Corrections of not less than Five Dollars (\$5.00), nor more than Two  
6 Hundred Fifty Dollars (\$250.00) for the presentence investigation.  
7 In hardship cases, the court shall set the amount of the fee and  
8 establish a payment schedule.

9 B. The Department shall, when conducting a presentence  
10 investigation, inquire into the circumstances of the offense and the  
11 characteristics of the offender. The information obtained from the  
12 investigation shall include, but shall not be limited to, a  
13 voluntary statement from each victim of the offense concerning the  
14 nature of the offense and the impact of the offense on the victim  
15 and the ~~victim's~~ immediate family of the victim, the amount of the  
16 loss suffered or incurred by the victim as a result of the criminal  
17 conduct of the offender, and the ~~offender's~~ age of the offender,  
18 marital status, living arrangements, financial obligations, income,  
19 family history, education, prior juvenile and criminal records,  
20 associations with other persons convicted of a felony offense,  
21 social history, indications of a predisposition to violence or  
22 substance abuse, remorse or guilt about the offense or ~~the victim's~~  
23 harm to the victim, job skills, and employment history. If the  
24 offender is serving in the military or is a veteran of the armed

1 forces of the United States and has been diagnosed with having a  
2 traumatic brain injury or a mental illness by a qualified  
3 psychiatrist, clinical psychologist or physician, the Department  
4 shall consult with the United States Department of Veterans Affairs,  
5 Oklahoma Department of Veterans Affairs, or any other agency or  
6 person with suitable knowledge or experience for the purpose of  
7 providing information to the court regarding treatment options  
8 available to the offender, including federal, state and local  
9 programming. The Department shall make a report of information from  
10 such investigation to the court, including a recommendation  
11 detailing the punishment which is deemed appropriate for both the  
12 offense and the offender, and specifically a recommendation for or  
13 against probation or suspended sentence. The report of the  
14 investigation shall be presented to the judge within a reasonable  
15 time, and upon failure to present the report, the judge may proceed  
16 with sentencing. Whenever, in the opinion of the court or the  
17 Department, it is desirable, the investigation shall include a  
18 physical and mental examination or either a physical or mental  
19 examination of the offender. When sentencing an offender who is  
20 serving in or is a veteran of the armed forces of the United States,  
21 the court shall consider the treatment recommendations of any  
22 diagnosing or treating physician or mental health professional  
23 together with the recommendations for punishment provided by the  
24 Department.

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

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

1 E. The required presentence investigation and report may be  
2 waived upon written waiver by the district attorney and the  
3 ~~defendant~~ offender and upon approval by the Court.

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

5 1. Arson in the first degree;

6 2. Assault with a dangerous weapon, battery with a dangerous  
7 weapon or assault and battery with a dangerous weapon;

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

10 4. Assault with intent to kill, or shooting with intent to  
11 kill;

12 5. Assault with intent to commit a felony, or use of a firearm  
13 to commit a felony;

14 6. Assault while masked or disguised;

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

16 8. Child beating or maiming;

17 9. Forcible sodomy;

18 10. Kidnapping, or kidnapping for extortion;

19 11. Lewd or indecent proposition or lewd or indecent acts with  
20 a child;

21 12. Manslaughter in the first or second degrees;

22 13. Murder in the first or second degrees;

23 14. Rape in the first or second degrees, or rape by  
24 instrumentation;

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

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

5 SECTION 2. This act shall become effective November 1, 2011.

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