

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1081

By: Bennett

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5
6 AS INTRODUCED

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

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

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

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

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

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

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

21 C. The district attorney shall have a presentence investigation
22 made by the Department on each person charged with a violent felony
23 offense and entering a plea of guilty or a plea of nolo contendere
24 as part of or in exchange for a plea agreement for a felony offense.

1 The presentence investigation shall be completed before the terms of
2 the plea agreement are finalized. The court shall not approve the
3 terms of any plea agreement without reviewing the presentence
4 investigation report to determine whether or not the terms of the
5 sentence are appropriate for both the offender and the offense. The
6 fee provided in subsection A of this section shall apply to persons
7 subject to this subsection and shall be a condition of the plea
8 agreement and sentence.

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

21 E. The required presentence investigation and report may be
22 waived upon written waiver by the district attorney and the
23 ~~defendant~~ offender and upon approval by the Court.

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

- 1 1. Arson in the first degree;
- 2 2. Assault with a dangerous weapon, battery with a dangerous
- 3 weapon or assault and battery with a dangerous weapon;
- 4 3. Aggravated assault and battery on a police officer, sheriff,
- 5 highway patrol officer, or any other officer of the law;
- 6 4. Assault with intent to kill, or shooting with intent to
- 7 kill;
- 8 5. Assault with intent to commit a felony, or use of a firearm
- 9 to commit a felony;
- 10 6. Assault while masked or disguised;
- 11 7. Burglary in the first degree or burglary with explosives;
- 12 8. Child beating or maiming;
- 13 9. Forcible sodomy;
- 14 10. Kidnapping, or kidnapping for extortion;
- 15 11. Lewd or indecent proposition or lewd or indecent acts with
- 16 a child;
- 17 12. Manslaughter in the first or second degrees;
- 18 13. Murder in the first or second degrees;
- 19 14. Rape in the first or second degrees, or rape by
- 20 instrumentation;
- 21 15. Robbery in the first or second degrees, or robbery by two
- 22 or more persons, or robbery with a dangerous weapon; or
- 23 16. Any attempt, solicitation or conspiracy to commit any of
- 24 the above enumerated offenses.

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

53-1-5865 GRS 01/05/11