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February 27, 2018

By: Shaw of the Senate

and

Humphrey of the House

An Act relating to criminal procedures; amending 22 O.S. 2011, Section 982, as amended by Section 1, Chapter 170, O.S.L. 2017 (22 O.S. Supp. 2017, Section 982), which relates to presentence investigation; modifying procedure; modifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 982, as amended by Section 1, Chapter 170, O.S.L. 2017 (22 O.S. Supp. 2017, 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 may, before imposing the sentence, require a presentence investigation be made of the offender by the Department of Corrections. 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 Five Hundred

1 Dollars (\$500.00) for the presentence investigation. In hardship
2 cases, the court shall set the amount of the fee and establish a
3 payment schedule.

4 B. Whenever a person has a prior felony conviction and is
5 convicted of a nonviolent offense the court may, before imposing a
6 sentence, order a presentence investigation be made of the offender
7 by a private provider or someone designated by the court other than
8 the Department of Corrections. The court shall order the defendant
9 to pay to the private provider or court designee assigned to
10 complete the presentence investigation a fee of not less than Five
11 Dollars (\$5.00) nor more than Five Hundred Dollars (\$500.00). In
12 hardship cases, the court shall set the amount of the fee and
13 establish a payment schedule.

14 C. When conducting a presentence investigation, the Department
15 shall inquire into the circumstances of the offense and the
16 characteristics of the offender. The information obtained from the
17 investigation shall include, but not be limited to, a voluntary
18 statement from each victim of the offense concerning the nature of
19 the offense and the impact of the offense on the victim and the
20 immediate family of the victim, the amount of the loss suffered or
21 incurred by the victim as a result of the criminal conduct of the
22 offender, and the age, marital status, living arrangements,
23 financial obligations, income, family history and education, prior
24 juvenile and criminal records, associations with other persons

1 convicted of a felony offense, social history, indications of a
2 predisposition to violence or substance abuse, remorse or guilt
3 about the offense or the harm to the victim, job skills and
4 employment history of the offender. The Department shall make a
5 report of information from such investigation to the court,
6 including a recommendation detailing the punishment which is deemed
7 appropriate for both the offense and the offender, and specifically
8 a recommendation for or against probation or suspended sentence.
9 The report of the investigation shall be presented to the judge
10 within a reasonable time, and upon failure to present the report,
11 the judge may proceed with sentencing. Whenever, in the opinion of
12 the court or the Department, it is desirable, the investigation
13 shall include a physical and mental examination or either a physical
14 or mental examination of the offender.

15 D. The district attorney ~~shall~~ may have a presentence
16 investigation made by the Department on each person charged with a
17 violent felony offense and entering a plea of guilty or a plea of
18 nolo contendere as part of or in exchange for a plea agreement for a
19 violent felony offense. The presentence investigation shall be
20 completed before the terms of the plea agreement are finalized. The
21 court shall not approve the terms of any plea agreement without
22 reviewing the presentence investigation report to determine whether
23 or not the terms of the sentence are appropriate for both the
24 offender and the offense. The fee provided in subsection A of this

1 section shall apply to persons subject to this subsection and shall
2 be a condition of the plea agreement and sentence.

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

15 F. The required presentence investigation and report may be
16 waived upon written waiver by the district attorney and the
17 defendant and upon approval by the Court.

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

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

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

20 SECTION 2. This act shall become effective November 1, 2018.

21 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
22 February 27, 2018 - DO PASS
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