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February 26, 2019

SENATE BILL NO. 186

By: Shaw of the Senate

and

Worthen of the House

An Act relating to criminal procedure; amending 22 O.S. 2011, Section 982, as amended by Section 1, Chapter 170, O.S.L. 2017 (22 O.S. 2018, Section 982), which relates to presentence investigations; modifying allowable fee for certain investigation; modifying requirement for certain investigation; 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. 2018, 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

1 ~~not less than Five Dollars (\$5.00), nor more than~~ in the amount of
2 Five Hundred Dollars (\$500.00) for the presentence investigation.
3 In hardship cases, the court ~~shall set~~ may reduce the amount of the
4 fee and establish a payment schedule.

5 B. ~~Whenever a person has a prior felony conviction and is~~
6 ~~convicted of a nonviolent offense the court may, before imposing a~~
7 ~~sentence, order a presentence investigation be made of the offender~~
8 ~~by a private provider or someone designated by the court. The court~~
9 ~~shall order the defendant to pay to the private provider or court~~
10 ~~designee assigned to complete the presentence investigation a fee of~~
11 ~~not less than Five Dollars (\$5.00) nor more than Five Hundred~~
12 ~~Dollars (\$500.00). In hardship cases, the court shall set the~~
13 ~~amount of the fee and establish a payment schedule~~ Whenever a person
14 has a prior felony conviction and enters a plea of guilty or nolo
15 contendere to a felony offense other than a violent felony offense,
16 without an agreement by the district attorney regarding the sentence
17 to be imposed, the court may order a presentence investigation be
18 made by the Department of Corrections. The fee provided in
19 subsection A of this section shall apply to persons subject to this
20 subsection.

21 C. Whenever a person has entered a plea of not guilty to a
22 nonviolent felony offense and is found guilty by a court following a
23 non-jury trial, the court may require a presentence investigation be
24 made by the Department of Corrections. The fee provided in

1 subsection A of this section shall apply to persons subject to this
2 subsection.

3 D. When conducting a presentence investigation, the Department
4 shall inquire into the circumstances of the offense and the
5 characteristics of the offender. The information obtained from the
6 investigation shall include, but not be limited to, a voluntary
7 statement from each victim of the offense concerning the nature of
8 the offense and the impact of the offense on the victim and the
9 immediate family of the victim, the amount of the loss suffered or
10 incurred by the victim as a result of the criminal conduct of the
11 offender, and the age, marital status, living arrangements,
12 financial obligations, income, family history and education, prior
13 juvenile and criminal records, associations with other persons
14 convicted of a felony offense, social history, indications of a
15 predisposition to violence or substance abuse, remorse or guilt
16 about the offense or the harm to the victim, job skills and
17 employment history of the offender. The Department shall make a
18 report of information from such investigation to the court,
19 including a recommendation detailing the punishment which is deemed
20 appropriate for both the offense and the offender, and specifically
21 a recommendation for or against probation or suspended sentence.
22 The report of the investigation shall be presented to the judge
23 within a reasonable time, and upon failure to present the report,
24 the judge may proceed with sentencing. Whenever, in the opinion of

1 the court or the Department, it is desirable, the investigation
2 shall include a physical and mental examination or either a physical
3 or mental examination of the offender.

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

16 ~~E.~~ F. The presentence investigation reports specified in this
17 section shall not be referred to, or be considered, in any appeal
18 proceedings. Before imposing a sentence, the court shall advise the
19 defendant, counsel for the defendant, and the district attorney of
20 the factual contents and conclusions of the presentence
21 investigation report. The court shall afford the offender a fair
22 opportunity to controvert the findings and conclusions of the
23 reports at the time of sentencing. If either the defendant or the
24 district attorney desires, a hearing shall be set by the court to

1 allow both parties an opportunity to offer evidence proving or
2 disproving any finding contained in a report, which shall be a
3 hearing in mitigation or aggravation of punishment.

4 ~~F.~~ G. The required presentence investigation and report may be
5 waived upon written waiver by the district attorney and the
6 defendant and upon approval by the Court.

7 ~~G.~~ H. As used in this section, "violent felony offense" means:

8 1. Arson in the first degree;

9 2. Assault with a dangerous weapon, battery with a dangerous
10 weapon or assault and battery with a dangerous weapon;

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

13 4. Assault with intent to kill, or shooting with intent to
14 kill;

15 5. Assault with intent to commit a felony, or use of a firearm
16 to commit a felony;

17 6. Assault while masked or disguised;

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

19 8. Child beating or maiming;

20 9. Forcible sodomy;

21 10. Kidnapping, or kidnapping for extortion;

22 11. Lewd or indecent proposition or lewd or indecent acts with
23 a child;

24 12. Manslaughter in the first or second degrees;

1 13. Murder in the first or second degrees;

2 14. Rape in the first or second degrees, or rape by
3 instrumentation;

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

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

8 SECTION 2. This act shall become effective November 1, 2019.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 February 26, 2019 - DO PASS
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