

1 ENGROSSED SENATE AMENDMENTS
TO
2 ENGROSSED HOUSE
BILL NO. 3777

By: Duel, Davis, and Lowe
(Jason) of the House

and

Howard of the Senate

7 An Act relating to criminal procedure; specifying
8 requirements for issuing criminal subpoenas;
9 requiring witnesses to attend trials or hearings upon
10 service of *** period for submitting written
objections; providing procedures for serving written
objections; allowing *** provision; providing for
codification; and providing an effective date.

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12 AMENDMENT NO. 1. Page 5, line 14, strike after the word "to" and
13 before the letter "C.", the words "appear before",
and insert the words "(appear before) or (produce
for inspection to)"

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15 AMENDMENT NO. 2. Page 7, line 1, insert after the word "deposition"
and before the first comma ",", the words
16 "pursuant to Section 761 et seq. of this title"

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1 Passed the Senate the 22nd day of April, 2024.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2024.

7
8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 3777

By: Duel, Davis, and Lowe
(Jason) of the House

3 and

4 Howard of the Senate
5
6

7 An Act relating to criminal procedure; specifying
8 requirements for issuing criminal subpoenas;
9 requiring witnesses to attend trials or hearings upon
10 service of subpoenas; allowing court clerks and
11 attorneys to issue subpoenas; directing issuers of
12 subpoenas to avoid imposing undue burden or expense
13 on persons subject to subpoenas; requiring courts to
14 enforce said duty; providing for sanctions; allowing
15 courts to quash or modify subpoenas under certain
16 circumstances; declaring subpoenas separate and
17 distinct from certain rights or obligations; amending
18 22 O.S. 2021, Sections 708, 710, 712, 715 and 716,
19 which relate to the service and issuance of
20 subpoenas; updating statutory references and form
21 requirements; providing guidelines and requirements
22 for issuing subpoenas requesting the production of
23 documents or inspection of premises; allowing for the
24 nonappearance of persons unless commanded to appear;
authorizing service of written objections to
subpoenas; establishing time period for submitting
written objections; providing procedures for serving
written objections; allowing parties to move for
orders to compel production; providing requirements
for producing documents; providing guidelines for
claims of privilege or protection of trial
preparation materials; clarifying processes for
serving subpoenas in person and by mail; modifying
exemption to subpoena requirement for court clerks;
clarifying criminal contempt penalty provision;
providing for codification; and providing an
effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 707.1 of Title 22, unless there
4 is created a duplication in numbering, reads as follows:

5 A. A subpoena issued on behalf of or by a defendant to a law
6 enforcement agency may command the production of the following law
7 enforcement records:

- 8 1. Body camera videos;
- 9 2. Vehicle mounted camera videos;
- 10 3. Traffic camera videos; and
- 11 4. Law enforcement incident reports.

12 B. A law enforcement agency may charge a record copying fee of
13 not more than One Dollar (\$1.00) per page and a video copying fee of
14 not more than Fifty Dollars (\$50.00) per video when complying with
15 the requests of the subpoena.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 707.2 of Title 22, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Every subpoena issued on behalf of or by a defendant shall
20 state the name of the court from which it is issued and the title of
21 the action.

22 B. A witness shall be obligated upon service of a subpoena to
23 attend a trial or hearing at any place within the state.

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1 C. The court clerk shall issue a subpoena, or a subpoena for
2 the production of documentary evidence, signed and sealed but
3 otherwise in blank, to a party requesting it, who shall complete the
4 subpoena before service. As an officer of the court, an attorney
5 authorized to practice law in this state may also issue and sign a
6 subpoena on behalf of a court in this state.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 707.3 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 A party or an attorney responsible for the issuance and service
11 of a subpoena shall take reasonable steps to avoid imposing undue
12 burden or expense on a person subject to that subpoena. The court
13 on behalf of which the subpoena was issued shall enforce this duty
14 and impose upon the party or attorney, or both, in breach of this
15 duty an appropriate sanction, which may include, but is not limited
16 to, lost earnings and a reasonable attorney fee.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 707.4 of Title 22, unless there
19 is created a duplication in numbering, reads as follows:

20 A. On timely motion, the court by which a subpoena was issued
21 shall quash or modify the subpoena if it:

22 1. Fails to allow reasonable time for compliance;

23 2. Requires a person to travel to a place beyond the limits of
24 the county where the person resides or is served with the subpoena;

1 3. Requires disclosure of privileged or other protected matter
2 and no exception or waiver applies;

3 4. Subjects a person to undue burden; or

4 5. Requires production of books, papers, documents, or tangible
5 things that fall outside the scope of discovery permitted by Section
6 3226 of Title 12 of the Oklahoma Statutes.

7 B. If a subpoena:

8 1. Requires disclosure of a trade secret or other confidential
9 research, development, or commercial information; or

10 2. Requires disclosure of the opinion of an unretained expert
11 or information not describing specific events or occurrences in
12 dispute and resulting from the study by the expert made not at the
13 request of any party, the court may, to protect a person subject to
14 or affected by the subpoena, quash or modify the subpoena. However,
15 if the party in whose behalf the subpoena is issued shows a
16 substantial need for the testimony or material that cannot be
17 otherwise met without undue hardship and assures that the person to
18 whom the subpoena is addressed will be reasonably compensated, the
19 court may order appearance or production only upon specified
20 conditions.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 707.5 of Title 22, unless there
23 is created a duplication in numbering, reads as follows:

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1 Subpoenas issued in accordance with the provisions of Sections
2 707.1 through 707.3, 708, 710 and 712 of Title 22 of the Oklahoma
3 Statutes shall be considered separate and distinct from any right or
4 obligation provided for in Section 2002 of Title 22 of the Oklahoma
5 Statutes.

6 SECTION 6. AMENDATORY 22 O.S. 2021, Section 708, is
7 amended to read as follows:

8 Section 708. A subpoena, authorized by the ~~last four sections~~
9 provisions of Sections 704, 705, 706, 707, and 707.1 of this title,
10 must be substantially in the following form:

11 IN THE NAME OF THE STATE OF
12 OKLAHOMA.

13 To ,

14 Greeting: You are commanded to appear before C. D., a justice
15 of the peace of at (or the grand jury of the ~~county~~
16 County of or the district court of ~~county~~
17 County, or other location as ~~the case~~ may be specified), on the
18 (stating day and hour), and remain in attendance on and
19 call of said from day to day and term to term until
20 lawfully discharged, as a witness in a criminal action prosecuted by
21 the State of Oklahoma against E. F. (or to testify as the case may
22 be).

23 SECTION 7. AMENDATORY 22 O.S. 2021, Section 710, is
24 amended to read as follows:

1 Section 710. A. If the books, papers or documents be required,
2 a direction to the following effect must be continued in the
3 subpoena:

4 And you are required also to bring with you the following:
5 (Describe intelligently the books, papers or documents required).

6 B. A copy of any subpoena that commands production of documents
7 and things or inspection of premises before trial shall be served on
8 each party in the manner prescribed by subsection B of Section 2005
9 of Title 12 of the Oklahoma Statutes. If the subpoena commands
10 production of documents and things or inspection of premises from a
11 nonparty before trial but does not require attendance of a witness,
12 the subpoena shall specify a date and location for the production or
13 inspection that is at least seven (7) days after the date that the
14 subpoena and copies of the subpoena are served on the witness and
15 all parties, and the subpoena shall include the following language:
16 "In order to allow objections to the production of documents and
17 things to be filed, you should not produce them until the date
18 specified in this subpoena, and if an objection is filed, until the
19 court rules on the objection."

20 C. A person commanded to produce and permit inspection,
21 copying, testing or sampling of designated books, papers, documents,
22 electronically stored information or tangible things, or inspection
23 of premises need not appear in person at the place of production or
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1 inspection unless commanded to appear for deposition, hearing, or
2 trial.

3 D. Subject to subsection F of this section, a person commanded
4 to produce and permit inspection, copying, testing or sampling, or
5 any party may, within fourteen (14) days after service of the
6 subpoena or before the time specified for compliance if such time is
7 less than fourteen (14) days after service, serve written objection
8 to inspection, copying, testing, or sampling of any or all of the
9 designated materials or of the premises, or to producing
10 electronically stored information in the form or forms requested.
11 An objection that all or a portion of the requested material will or
12 should be withheld on a claim that it is privileged or subject to
13 protection as trial preparation materials shall be made within this
14 time period and in accordance with subsections E and F of this
15 section. If the objection is made by the witness, the witness shall
16 serve the objection on all parties; if objection is made by a party,
17 the party shall serve the objection on the witness and all other
18 parties. If objection is made, the party serving the subpoena shall
19 not be entitled to inspect, copy, test, or sample the materials or
20 inspect the premises except pursuant to an order of the court by
21 which the subpoena was issued. For failure to object in a timely
22 fashion, the court may assess reasonable costs and attorney fees or
23 take any other action it deems proper; however, a privilege or the
24 protection for trial preparation materials shall not be waived

1 solely for a failure to timely object under this section. If
2 objection has been made, the party serving the subpoena may, upon
3 notice to the person commanded to produce, move at any time for an
4 order to compel the production. Such an order to compel production
5 shall protect any person who is not a party or an officer of a party
6 from significant expense resulting from the inspection and copying
7 commanded.

8 E. 1. A person responding to a subpoena to produce documents
9 shall produce them as they are kept in the usual course of business
10 or shall organize and label them to correspond with the categories
11 in the demand.

12 2. If a subpoena does not specify the form or forms for
13 producing electronically stored information, a person responding to
14 a subpoena shall produce the information in a form or forms in which
15 the person ordinarily maintains it or in a form or forms that are
16 reasonably usable.

17 3. A person responding to a subpoena is not required to produce
18 the same electronically stored information in more than one form.

19 4. A person responding to a subpoena is not required to provide
20 discovery of electronically stored information from sources that the
21 person identifies as not reasonably accessible because of undue
22 burden or cost. If such showing is made, the court may order
23 discovery from such sources if the requesting party shows good
24 cause, considering the limitations of subparagraph c of paragraph 2

1 of subsection B of Section 3226 of Title 12 of the Oklahoma
2 Statutes. The court may specify conditions for the discovery.

3 F. 1. When information subject to a subpoena is withheld on a
4 claim that it is privileged or subject to protection as trial
5 preparation materials, the claim shall be made expressly and shall
6 be supported by a description of the nature of the documents,
7 communications, or things not produced that is sufficient to enable
8 the demanding party to contest the claim.

9 2. If information is produced in response to a subpoena that is
10 subject to a claim or privilege or of protection as trial
11 preparation material, the person making the claim may notify any
12 party that received the information of the claim and the basis for
13 such claim. After being notified, a party shall promptly return,
14 sequester, or destroy the specified information and any copies the
15 party has and may not use or disclose the information until the
16 claim is resolved. A receiving party may promptly present the
17 information to the court under seal for a determination of the
18 claim. If the receiving party disclosed the information before
19 being notified, such party shall take reasonable steps to retrieve
20 the information. The person who produced the information shall
21 preserve the information until the claim is resolved. This
22 mechanism is procedural only and does not alter the standards
23 governing whether the information is privileged or subject to
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1 protection as trial preparation material or whether such privilege
2 or protection has been waived.

3 SECTION 8. AMENDATORY 22 O.S. 2021, Section 712, is
4 amended to read as follows:

5 Section 712. A. ~~Service of subpoenas for witnesses in criminal~~
6 ~~actions in the district courts of this state~~ a subpoena upon a
7 person named therein shall be made in the same manner as in civil
8 actions pursuant to Section 2004.1 of Title 12 of the Oklahoma
9 Statutes by delivering or mailing a copy thereof to such person and,
10 if the attendance of the person is demanded, by tendering to that
11 person the fees for one (1) day of attendance and the mileage
12 allowed by law. Service of a subpoena may be accomplished by any
13 person who is eighteen (18) years of age or older.

14 B. Service of a subpoena by mail may be accomplished by mailing
15 a copy thereof by certified mail with return receipt requested and
16 delivery restricted to the person named in the subpoena. The person
17 serving the subpoena shall make proof of service thereof to the
18 court promptly, and in any event, before the witness is required to
19 testify at the hearing or trial. If service is made by a person
20 other than a peace officer, such person shall make affidavit
21 thereof. If service is by mail, the person serving the subpoena
22 shall show in the proof of service the date and place of mailing and
23 attach a copy of the return receipt showing that the mailing was
24 accepted. Failure to make proof of service does not affect the

1 validity of the service, but service of a subpoena by mail shall not
2 be effective if the mailing was not accepted by the person named in
3 the subpoena. The ~~cost~~ costs of service of ~~subpoenas~~ shall be ~~borne~~
4 ~~by the parties unless otherwise ordered by the court~~ allowed whether
5 service is made by a peace officer or any other person.

6 SECTION 9. AMENDATORY 22 O.S. 2021, Section 715, is
7 amended to read as follows:

8 Section 715. A. No person is obliged to attend as a witness
9 before a court or magistrate outside the county where the witness
10 resides or is served with a subpoena, unless the judge of the court
11 in which the offense is triable, upon an affidavit of the district
12 attorney, or of the defendant or the defendant's counsel, stating
13 that he or she believes that the evidence and attendance of the
14 witness is material and necessary, shall endorse on the subpoena an
15 order for the attendance of the witness.

16 B. The court clerks of this state shall not be subject to
17 subpoena in matters relating to court records unless the court makes
18 a specific finding that the appearance and testimony of the court
19 clerk are both material and necessary because of a written objection
20 to the introduction of ~~certified documents~~ court records made by the
21 defendant or other party prior to trial.

22 SECTION 10. AMENDATORY 22 O.S. 2021, Section 716, is
23 amended to read as follows:

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1 Section 716. Disobedience or failure by any person without
2 adequate excuse to obey a subpoena served upon himself or herself,
3 or a refusal to be sworn or to testify, may be ~~punished by the court~~
4 ~~or magistrate, as for~~ deemed a criminal contempt, ~~in the manner~~
5 ~~provided in civil procedure~~ of the court from which the subpoena was
6 issued.

7 SECTION 11. This act shall become effective November 1, 2024.

8 Passed the House of Representatives the 14th day of March, 2024.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2024.

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Presiding Officer of the Senate

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