

1 ENGROSSED HOUSE
2 BILL NO. 1019

By: Pae and McEntire of the
House

3 and

4 Howard of the Senate
5

6
7 [criminal procedure - clarifying evidentiary
8 requirements for preliminary examinations -
9 modifying time limitation for completion of
10 discovery issues - effective date]
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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 22 O.S. 2011, Section 258, is
16 amended to read as follows:

17 Section 258. ~~First:~~ A. The witnesses must be examined in the
18 presence of the defendant, and may be cross-examined by ~~him~~ the
19 defendant. On the request of the district attorney, or the
20 defendant, all the testimony must be reduced to writing in the form
21 of questions and answers and signed by the witnesses, or the same
22 may be taken in shorthand and transcribed without signing, and in
23 both cases filed with the clerk of the district court, by the
24 examining magistrate, and may be used as provided in Section 333 of

1 this title. In no case shall the county be liable for the expense
2 in reducing such testimony to writing, unless ordered by the judge
3 of a court of record.

4 ~~Second:~~ B. The district attorney may, on approval of the county
5 judge or the district judge, issue subpoenas in felony cases and
6 call witnesses before ~~him~~ the district attorney and have them sworn
7 and their testimony reduced to writing and signed by the witnesses
8 at the cost of the county. Such examination must be confined to
9 some felony committed against the statutes of the state and triable
10 in that county, and the evidence so taken shall not be receivable in
11 any civil proceeding. A refusal to obey such subpoena or to be
12 sworn or to testify may be punished as a contempt on complaint and
13 showing to the county court, or district court, or the judges
14 thereof that proper cause exists therefor.

15 ~~Third:~~ C. No preliminary information shall be filed without the
16 consent or endorsement of the district attorney, unless the
17 defendant be taken in the commission of a felony, or the offense be
18 of such character that the accused is liable to escape before the
19 district attorney can be consulted. If the defendant is discharged
20 and the information is filed without authority from or endorsement
21 of the district attorney, the costs must be taxed to the prosecuting
22 witness, and the county shall not be liable therefor.

23 ~~Fourth:~~ D. The convening and session of a grand jury does not
24 dispense with the right of the district attorney to file complaints

1 and informations, conduct preliminary hearings and other routine
2 matters, unless otherwise specifically ordered, by a written order
3 of the court convening the grand jury; made on ~~the court's own~~ a
4 motion by the court, or at the request of the grand jury.

5 ~~Fifth:~~ E. There shall be no preliminary examinations in
6 misdemeanor cases.

7 ~~Sixth:~~ F. A preliminary magistrate shall have the authority to
8 limit the evidence presented at the preliminary hearing to that
9 which is relevant to the issues of: ~~(1) whether~~

10 1. Whether the crime was committed, ~~and (2) whether~~

11 2. Whether there is probable cause to believe the defendant
12 committed the crime.

13 Once a showing of probable cause is made, the magistrate shall
14 terminate the preliminary hearing and enter a bindover order;

15 provided, however, that the preliminary hearing shall be terminated
16 only if the state made available ~~for inspection law enforcement~~

17 ~~reports~~ all discovery requested by the defendant within the

18 ~~prosecuting attorney's~~ knowledge or possession of the prosecuting

19 attorney at the time to the defendant five (5) working days prior to

20 the date of the preliminary hearing unless otherwise ordered by the

21 court for good cause shown. ~~The district attorney shall determine~~

22 ~~whether or not to make law enforcement reports available prior to~~

23 ~~the preliminary hearing. If reports are made available, the~~

24 ~~district attorney shall be required to provide those law enforcement~~

1 ~~reports that the district attorney knows to exist at the time of~~
2 ~~providing the reports, but this does not include any physical~~
3 ~~evidence which may exist in the case. This provision does not~~
4 ~~require the district attorney to provide copies for the defendant,~~
5 ~~but only to make them available for inspection by defense counsel.~~
6 In the alternative, upon agreement of the state and the defendant,
7 the court may terminate the preliminary hearing once a showing of
8 probable cause is made.

9 ~~Seventh:~~ G. A preliminary magistrate shall accept into evidence
10 as proof of prior convictions a noncertified copy of a Judgment and
11 Sentence when the copy appears to the preliminary magistrate to be
12 patently accurate. The district attorney shall make a noncertified
13 copy of the Judgment and Sentence available to the defendant no
14 fewer than five (5) days prior to the hearing. If such copy is not
15 made available five (5) days prior to the hearing, the court shall
16 continue the portion of the hearing to which the copy is relevant
17 for such time as the defendant requests, not to exceed five (5) days
18 subsequent to the receipt of the copy.

19 ~~Eighth:~~ H. The purpose of the preliminary hearing is to
20 establish probable cause that a crime was committed and probable
21 cause that the defendant committed the crime.

22 SECTION 2. AMENDATORY 22 O.S. 2011, Section 2002, is
23 amended to read as follows:

24 Section 2002. A. Disclosure of Evidence by the State.

- 1 1. Upon request of the defense, the state shall be required to
2 disclose the following:
- 3 a. the names and addresses of witnesses which the state
4 intends to call at trial, together with their
5 relevant, written or recorded statement, if any, or if
6 none, significant summaries of any oral statement,
 - 7 b. law enforcement reports made in connection with the
8 particular case,
 - 9 c. any written or recorded statements and the substance
10 of any oral statements made by the accused or made by
11 a codefendant,
 - 12 d. any reports or statements made by experts in
13 connection with the particular case, including results
14 of physical or mental examinations and of scientific
15 tests, experiments, or comparisons,
 - 16 e. any books, papers, documents, photographs, tangible
17 objects, buildings or places which the prosecuting
18 attorney intends to use in the hearing or trial or
19 which were obtained from or belong to the accused,
 - 20 f. any record of prior criminal convictions of the
21 defendant, or of any codefendant, and
 - 22 g. Oklahoma State Bureau of Investigation (OSBI) rap
23 sheet/records check on any witness listed by the state
24 or the defense as a witness who will testify at trial,

1 as well as any convictions of any witness revealed
2 through additional record checks if the defense has
3 furnished ~~social security~~ Social Security numbers or
4 date of birth for their witnesses, except OSBI rap
5 sheet/record checks shall not provide date of birth,
6 ~~social security~~ Social Security number, home phone
7 number or address.

8 2. The state shall provide the defendant any evidence favorable
9 to the defendant if such evidence is material to either guilt or
10 punishment.

11 3. The prosecuting attorney's obligations under this standard
12 extend to:

- 13 a. material and information in the possession or control
14 of members of the prosecutor's staff,
- 15 b. any information in the possession of law enforcement
16 agencies that regularly report to the prosecutor of
17 which the prosecutor should reasonably know, and
- 18 c. any information in the possession of law enforcement
19 agencies who have reported to the prosecutor with
20 reference to the particular case of which the
21 prosecutor should reasonably know.

22 B. Disclosure of Evidence by the Defendant.

23 1. Upon request of the state, the defense shall be required to
24 disclose the following:

- 1 a. the names and addresses of witnesses which the defense
2 intends to call at trial, together with their
3 relevant, written or recorded statement, if any, or if
4 none, significant summaries of any oral statement,
5 b. the name and address of any witness, other than the
6 defendant, who will be called to show that the
7 defendant was not present at the time and place
8 specified in the information or indictment, together
9 with the witness' statement to that fact, and
10 c. the names and addresses of any witness the defendant
11 will call, other than himself, for testimony relating
12 to any mental disease, mental defect, or other
13 condition bearing upon his mental state at the time
14 the offense was allegedly committed, together with the
15 witness' statement of that fact, if the statement is
16 redacted by the court to preclude disclosure of
17 privileged communication.

18 2. A statement filed under subparagraph a, b or c of paragraph
19 1 of subsection A or B of this section is not admissible in evidence
20 at trial. Information obtained as a result of a statement filed
21 under subsection A or B of this section is not admissible in
22 evidence at trial except to refute the testimony of a witness whose
23 identity subsection A of this section requires to be disclosed.
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1 3. Upon the prosecuting attorney's request after the time set
2 by the court, the defendant shall allow him access at any reasonable
3 times and in any reasonable manner to inspect, photograph, copy, or
4 have reasonable tests made upon any book, paper, document,
5 photograph, or tangible object which is within the defendant's
6 possession or control and which:

7 a. the defendant intends to offer in evidence, except to
8 the extent that it contains any communication of the
9 defendant, or

10 b. is a report or statement as to a physical or mental
11 examination or scientific test or experiment made in
12 connection with the particular case prepared by and
13 relating to the anticipated testimony of a person whom
14 the defendant intends to call as a witness, provided
15 the report or statement is redacted by the court to
16 preclude disclosure of privileged communication.

17 C. Continuing Duty to Disclose.

18 If, prior to or during trial, a party discovers additional
19 evidence or material previously requested or ordered, which is
20 subject to discovery or inspection under the Oklahoma Criminal
21 Discovery Code, such party shall promptly notify the other party,
22 the attorney of the other party, or the court of the existence of
23 the additional evidence or material.

24 D. Time of Discovery.

1 Motions for discovery may be made at the time of the district
2 court arraignment or thereafter; ~~provided that requests for police~~
3 ~~reports may be made subject to the provisions of Section 258 of this~~
4 ~~title. However, a request pursuant to Section 258 of this title~~
5 ~~shall be subject to the discretion of the district attorney.~~ All
6 issues relating to discovery, except as otherwise provided, will be
7 completed ~~at least ten (10) days prior to trial~~ within twenty (20)
8 days of receiving a request. The court may specify the time, place
9 and manner of making the discovery and may prescribe such terms and
10 conditions as are just.

11 E. Regulation of Discovery.

12 1. Protective and Modifying Orders. Upon motion of the state
13 or defendant, the court may at any time order that specified
14 disclosures be restricted, or make any other protective order. If
15 the court enters an order restricting specified disclosures, the
16 entire text of the material restricted shall be sealed and preserved
17 in the records of the court to be made available to the appellate
18 court in the event of an appeal.

19 2. Failure to Comply with a Request. If at any time during the
20 course of the proceedings it is brought to the attention of the
21 court that a party has failed to comply with this rule, the court
22 may order such party to permit the discovery or inspection, grant
23 continuance, or prohibit the party from introducing evidence not
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1 disclosed, or it may enter such other order as it deems just under
2 the circumstances.

3 3. The discovery order shall not include discovery of legal
4 work product of either attorney which is deemed to include legal
5 research or those portions of records, correspondence, reports, or
6 memoranda which are only the opinions, theories, or conclusions of
7 the attorney or the attorney's legal staff.

8 F. Reasonable cost of copying, duplicating, videotaping,
9 developing or any other cost associated with this Code for items
10 requested shall be paid by the party so requesting; however, any
11 item which was obtained from the defendant by the state of which
12 copies are requested by the defendant shall be paid by the state.
13 Provided, if the court determines the defendant is indigent and
14 without funds to pay the cost of reproduction of the required items,
15 the cost shall be paid by the Indigent Defender System, unless
16 otherwise provided by law.

17 SECTION 3. This act shall become effective November 1, 2019.
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1 Passed the House of Representatives the 11th day of March, 2019.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

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9 Presiding Officer of the Senate