

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1672

By: West (Kevin)

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6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Section 2002, as amended by Section 2,
9 Chapter 97, O.S.L. 2020 (22 O.S. Supp. 2020, Section
10 2002), which relates to the Oklahoma Criminal
11 Discovery Code; updating language; providing gender-
12 neutral language; and providing an effective date.

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

14 SECTION 1. AMENDATORY 22 O.S. 2011, Section 2002, as
15 amended by Section 2, Chapter 97, O.S.L. 2020 (22 O.S. Supp. 2020,
16 Section 2002), is amended to read as follows:

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

18 1. Upon request of the defense, the state shall disclose the
19 following:

- 20 a. the names and addresses of witnesses which the state
21 intends to call at trial, together with their
22 relevant, written or recorded statement, if any, or if
23 none, significant summaries of any oral statement,
24 b. law enforcement reports made in connection with the
particular case,

- 1 c. any written or recorded statements and the substance
2 of any oral statements made by the accused or made by
3 a codefendant,
- 4 d. any reports or statements made by experts in
5 connection with the particular case, including results
6 of physical or mental examinations and of scientific
7 tests, experiments, or comparisons,
- 8 e. any books, papers, documents, photographs, tangible
9 objects, buildings or places which the prosecuting
10 attorney intends to use in the hearing or trial or
11 which were obtained from or belong to the accused,
- 12 f. any record of prior criminal convictions of the
13 defendant, or of any codefendant, and
- 14 g. Oklahoma State Bureau of Investigation (OSBI) rap
15 sheet/records check on any witness listed by the state
16 or the defense as a witness who will testify at trial,
17 as well as any convictions of any witness revealed
18 through additional record checks if the defense has
19 furnished Social Security numbers or date of birth for
20 their witnesses, except OSBI rap sheet/record checks
21 shall not provide date of birth, Social Security
22 number, home phone number or address.
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1 2. The state shall provide the defendant any evidence favorable
2 to the defendant if such evidence is material to either guilt or
3 punishment.

4 3. The ~~prosecuting attorney's~~ obligations of the prosecuting
5 attorney under this standard extend to:

6 a. material and information in the possession or control
7 of members of the ~~prosecutor's~~ staff of the
8 prosecutor,

9 b. any information in the possession of law enforcement
10 agencies that regularly report to the prosecutor of
11 which the prosecutor should reasonably know, and

12 c. any information in the possession of law enforcement
13 agencies who have reported to the prosecutor with
14 reference to the particular case of which the
15 prosecutor should reasonably know.

16 4. a. If the state intends to introduce testimony of a
17 jailhouse informant, the state shall disclose at least
18 ten (10) days prior to trial:

19 (1) the complete criminal history of such informant,
20 including any dismissed charges,

21 (2) any deal, promise, inducement or benefit that the
22 state or law enforcement agency has made or may
23 make in the future to the jailhouse informant in
24 connection with the testimony of such informant,

1 (3) the specific statements or recordings made by the
2 suspect or defendant and the time, place and
3 manner of the disclosure to the jailhouse
4 informant,

5 (4) all other filed cases in which the state intended
6 to introduce the testimony of the jailhouse
7 informant in connection with a deal, promise,
8 inducement or benefit, the nature of the deal,
9 promise, inducement or benefit, and whether the
10 testimony was admitted in the case,

11 (5) whether at any time the jailhouse informant
12 recanted the testimony or statement, and if so, a
13 transcript or copy of such recantation, if any,
14 and

15 (6) any other information relevant to the credibility
16 of the informant.

17 b. Each district attorney's office shall maintain a
18 central record that tracks each case in which the
19 state intended to introduce the testimony of the
20 jailhouse informant against a suspect or defendant in
21 connection with a deal, promise, inducement or
22 benefit, the nature of the deal, promise, inducement
23 or benefit and whether such testimony or statements
24 were admitted in the case. Such record shall be sent

1 to the District Attorneys Council which shall maintain
2 a statewide record of such information. Records
3 maintained pursuant to this paragraph shall only be
4 accessible to prosecutors and shall not be subject to
5 the Oklahoma Open Records Act. By September 15 of
6 each year, the District Attorneys Council shall
7 publish an annual report of aggregate, de-identified
8 data regarding the total number of cases tracked
9 pursuant to this section, and the number of cases
10 added during the previous fiscal year pursuant to this
11 section by each district attorney's office. A copy of
12 the report shall be distributed to the Governor, the
13 President Pro Tempore of the Senate, the Speaker of
14 the House of Representatives and the chairs of the
15 Senate and House Judiciary Committees.

16 c. For purposes of this paragraph, "jailhouse informant"
17 means a person who provides, or who the prosecutor
18 intends to provide, testimony about admissions or
19 other relevant information made to him or her by the
20 suspect or defendant while both persons were detained
21 or incarcerated in a penal institution.

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 of the witness to that
10 fact,
- 11 c. the ~~names~~ name and ~~addresses~~ address of any witness
12 the defendant will call, other than himself, for
13 testimony relating to any mental disease, mental
14 defect, or other condition bearing upon his mental
15 state at the time the offense was allegedly committed,
16 together with the witness' statement of that fact, if
17 the statement is redacted by the court to preclude
18 disclosure of privileged communication.

19 2. A statement filed under subparagraph a, b or c of paragraph
20 1 of subsection A of this section or ~~B~~ subparagraph a, b or c of
21 paragraph 1 of this section is not admissible in evidence at trial.
22 Information obtained as a result of a statement filed under
23 subsection A or B of this section is not admissible in evidence at
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1 trial except to refute the testimony of a witness whose identity
2 subsection A of this section requires to be disclosed.

3 3. Upon ~~the prosecuting attorney's~~ request of the prosecuting
4 attorney after the time set by the court, the defendant shall allow
5 ~~him~~ the prosecuting attorney access at any reasonable times and in
6 any reasonable manner to inspect, photograph, copy, or have
7 reasonable tests made upon any book, paper, document, photograph, or
8 tangible object which is within the ~~defendant's~~ possession or
9 control of the defendant and which:

10 a. the defendant intends to offer in evidence, except to
11 the extent that it contains any communication of the
12 defendant, or

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

20 C. Continuing Duty to Disclose.

21 If, prior to or during trial, a party discovers additional
22 evidence or material previously requested or ordered, which is
23 subject to discovery or inspection under the Oklahoma Criminal
24 Discovery Code, such party shall promptly notify the other party,

1 the attorney of the other party, or the court of the existence of
2 the additional evidence or material.

3 D. Time of Discovery.

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

13 E. Regulation of Discovery.

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

21 2. Failure to Comply with a Request. If at any time during the
22 course of the proceedings it is brought to the attention of the
23 court that a party has failed to comply with this rule, the court
24 may order such party to permit the discovery or inspection, grant

1 continuance, or prohibit the party from introducing evidence not
2 disclosed, or it may enter such other order as it deems just under
3 the circumstances.

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

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

18 SECTION 2. This act shall become effective November 1, 2021.

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20 58-1-6163 GRS 01/06/21

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