

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 165

By: Howard

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6 AS INTRODUCED

7 An Act relating to criminal discovery; amending 22  
8 O.S. 2011, Sections 258 and 2002, which relate to  
9 preliminary examinations and disclosure of evidence;  
10 modifying information required to be provided to  
11 defendant prior to termination of preliminary  
hearing; modifying time period for completion of  
12 certain discovery requests; making language gender  
neutral; 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 258, is  
15 amended to read as follows:

16 Section 258. First: The witnesses must be examined in the  
17 presence of the defendant, and may be cross-examined by ~~him~~ the  
18 defendant. On the request of the district attorney, or the  
19 defendant, all the testimony must be reduced to writing in the form  
20 of questions and answers and signed by the witnesses, or the same  
21 may be taken in shorthand and transcribed without signing, and in  
22 both cases filed with the clerk of the district court, by the  
23 examining magistrate, and may be used as provided in Section 333 of  
24 this title. In no case shall the county be liable for the expense

1 in reducing such testimony to writing, unless ordered by the judge  
2 of a court of record.

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

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

22 Fourth: The convening and session of a grand jury does not  
23 dispense with the right of the district attorney to file complaints  
24 and informations, conduct preliminary hearings and other routine  
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1 matters, unless otherwise specifically ordered, by a written order  
2 of the court convening the grand jury; made on the court's own  
3 motion, or at the request of the grand jury.

4 Fifth: There shall be no preliminary examinations in  
5 misdemeanor cases.

6 Sixth: A preliminary magistrate shall have the authority to  
7 limit the evidence presented at the preliminary hearing to that  
8 which is relevant to the issues of: (1) whether the crime was  
9 committed, and (2) whether there is probable cause to believe the  
10 defendant committed the crime. Once a showing of probable cause is  
11 made the magistrate shall terminate the preliminary hearing and  
12 enter a bindover order; provided, however, that the preliminary  
13 hearing shall be terminated only if the state made available ~~for~~  
14 ~~inspection law enforcement reports~~ all discovery requested by the  
15 defendant within the prosecuting attorney's knowledge or possession  
16 at the time to the defendant five (5) working days prior to the date  
17 of the preliminary hearing. The district attorney shall determine  
18 whether or not to make law enforcement reports available prior to  
19 the preliminary hearing unless otherwise ordered by the court for  
20 good cause shown. ~~If reports are made available, the district~~  
21 ~~attorney shall be required to provide those law enforcement reports~~  
22 ~~that the district attorney knows to exist at the time of providing~~  
23 ~~the reports, but this does not include any physical evidence which~~  
24 ~~may exist in the case. This provision does not require the district~~

1 ~~attorney to provide copies for the defendant, but only to make them~~  
2 ~~available for inspection by defense counsel.~~ In the alternative,  
3 upon agreement of the state and the defendant, the court may  
4 terminate the preliminary hearing once a showing of probable cause  
5 is made.

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

16 Eighth: The purpose of the preliminary hearing is to establish  
17 probable cause that a crime was committed and probable cause that  
18 the defendant committed the crime.

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

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

22 1. Upon request of the defense, the state shall be required to  
23 disclose the following:  
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- 1 a. the names and addresses of witnesses which the state  
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. law enforcement reports made in connection with the  
6 particular case,  
7 c. any written or recorded statements and the substance  
8 of any oral statements made by the accused or made by  
9 a codefendant,  
10 d. any reports or statements made by experts in  
11 connection with the particular case, including results  
12 of physical or mental examinations and of scientific  
13 tests, experiments, or comparisons,  
14 e. any books, papers, documents, photographs, tangible  
15 objects, buildings or places which the prosecuting  
16 attorney intends to use in the hearing or trial or  
17 which were obtained from or belong to the accused,  
18 f. any record of prior criminal convictions of the  
19 defendant, or of any codefendant, and  
20 g. Oklahoma State Bureau of Investigation (OSBI) rap  
21 sheet/records check on any witness listed by the state  
22 or the defense as a witness who will testify at trial,  
23 as well as any convictions of any witness revealed  
24 through additional record checks if the defense has

1 furnished social security numbers or date of birth for  
2 their witnesses, except OSBI rap sheet/record checks  
3 shall not provide date of birth, social security  
4 number, home phone number or address.

5 2. The state shall provide the defendant any evidence favorable  
6 to the defendant if such evidence is material to either guilt or  
7 punishment.

8 3. The prosecuting attorney's obligations under this standard  
9 extend to:

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

19 B. Disclosure of Evidence by the Defendant.

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

- 22 a. the names and addresses of witnesses which the defense  
23 intends to call at trial, together with their

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

16 2. A statement filed under subparagraph a, b or c of paragraph  
17 1 of subsection A or B of this section is not admissible in evidence  
18 at trial. Information obtained as a result of a statement filed  
19 under subsection A or B of this section is not admissible in  
20 evidence at trial except to refute the testimony of a witness whose  
21 identity subsection A of this section requires to be disclosed.

22 3. Upon the prosecuting attorney's request after the time set  
23 by the court, the defendant shall allow him or her access at any  
24 reasonable times and in any reasonable manner to inspect,

1 photograph, copy, or have reasonable tests made upon any book,  
2 paper, document, photograph, or tangible object which is within the  
3 defendant's possession or control and which:

4 a. the defendant intends to offer in evidence, except to  
5 the extent that it contains any communication of the  
6 defendant, or

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

14 C. Continuing Duty to Disclose.

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

21 D. Time of Discovery.

22 Motions for discovery may be made at the time of the district  
23 court arraignment or thereafter; ~~provided that requests for police~~  
24 ~~reports may be made subject to the provisions of Section 258 of this~~



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

8 E. Regulation of Discovery.

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

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

23 3. The discovery order shall not include discovery of legal  
24 work product of either attorney which is deemed to include legal

1 research or those portions of records, correspondence, reports, or  
2 memoranda which are only the opinions, theories, or conclusions of  
3 the attorney or the attorney's legal staff.

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

13 SECTION 3. This act shall become effective November 1, 2019.

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