

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1677

By: Howard

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7 AS INTRODUCED

8 An Act relating to criminal discovery; amending 22
9 O.S. 2021, Sections 258 and 2002, which relate to
10 preliminary examinations and disclosure of evidence;
11 modifying information required to be provided to
12 defendant prior to termination of preliminary
hearing; modifying time period for completion of
13 certain discovery requests; making language gender
14 neutral; updating statutory language; and providing
15 an effective date.

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

17 SECTION 1. AMENDATORY 22 O.S. 2021, Section 258, is
18 amended to read as follows:

19 Section 258. First: The witnesses must be examined in the
20 presence of the defendant, and may be cross-examined by ~~him~~ the
21 defendant. On the request of the district attorney, or the
22 defendant, all the testimony must be reduced to writing in the form
23 of questions and answers and signed by the witnesses, or the same
24 may be taken in shorthand and transcribed without signing, and in

1 both cases filed with the clerk of the district court, by the
2 examining magistrate, and may be used as provided in Section 333 of
3 this title. In no case shall the county be liable for the expense
4 in reducing such testimony to writing, unless ordered by the judge
5 of a court of record.

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

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

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

7 Fifth: There shall be no preliminary examinations in
8 misdemeanor cases.

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

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

9 Seventh: A preliminary magistrate shall accept into evidence as
10 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: The purpose of the preliminary hearing is to establish
20 probable cause that a crime was committed and probable cause that
21 the defendant committed the crime.

22 SECTION 2. AMENDATORY 22 O.S. 2021, 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 disclose the
2 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 numbers or ~~date~~ dates of
4 birth for their witnesses, except OSBI rap
5 sheet/record checks shall not provide date of birth,
6 Social Security number, home phone number or address.

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

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

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

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

- 1 (1) the complete criminal history of such informant,
2 including any dismissed charges,
- 3 (2) any deal, promise, inducement or benefit that the
4 state or law enforcement agency has made or may
5 make in the future to the jailhouse informant in
6 connection with the testimony of such informant,
- 7 (3) the specific statements or recordings made by the
8 suspect or defendant and the time, place and
9 manner of the disclosure to the jailhouse
10 informant,
- 11 (4) all other filed cases in which the state intended
12 to introduce the testimony of the jailhouse
13 informant in connection with a deal, promise,
14 inducement or benefit, the nature of the deal,
15 promise, inducement or benefit, and whether the
16 testimony was admitted in the case,
- 17 (5) whether at any time the jailhouse informant
18 recanted the testimony or statement, and if so, a
19 transcript or copy of such recantation, if any,
20 and
- 21 (6) any other information relevant to the credibility
22 of the informant.

23 b. Each district attorney's office shall maintain a
24 central record that tracks each case in which the
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1 state intended to introduce the testimony of the
2 jailhouse informant against a suspect or defendant in
3 connection with a deal, promise, inducement or
4 benefit, the nature of the deal, promise, inducement
5 or benefit and whether such testimony or statements
6 were admitted in the case. Such record shall be sent
7 to the District Attorneys Council which shall maintain
8 a statewide record of such information. Records
9 maintained pursuant to this paragraph shall only be
10 accessible to prosecutors and shall not be subject to
11 the Oklahoma Open Records Act. By September 15 of
12 each year, the District Attorneys Council shall
13 publish an annual report of aggregate, de-identified
14 data regarding the total number of cases tracked
15 pursuant to this section, and the number of cases
16 added during the previous fiscal year pursuant to this
17 section by each district attorney's office. A copy of
18 the report shall be distributed to the Governor, the
19 President Pro Tempore of the Senate, the Speaker of
20 the House of Representatives and the chairs of the
21 Senate and House Judiciary Committees.

22 c. For purposes of this paragraph, "jailhouse informant"
23 means a person who provides, or who the prosecutor
24 intends to provide, testimony about admissions or
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1 other relevant information made to him or her by the
2 suspect or defendant while both persons were detained
3 or incarcerated in ~~a penal institution~~ the custody of
4 the Department of Corrections.

5 B. Disclosure of Evidence by the Defendant.

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

8 a. the names and addresses of witnesses which the defense
9 intends to call at trial, together with their
10 relevant, written or recorded statement, if any, or if
11 none, significant summaries of any oral statement,

12 b. the name and address of any witness, other than the
13 defendant, who will be called to show that the
14 defendant was not present at the time and place
15 specified in the information or indictment, together
16 with the ~~witness'~~ witness's statement to that fact,
17 and

18 c. the names and addresses of any witness the defendant
19 will call, other than ~~himself~~ the defendant, for
20 testimony relating to any mental disease, mental
21 defect, or other condition bearing upon his or her
22 mental state at the time the offense was allegedly
23 committed, together with the ~~witness'~~ witness's
24 statement of that fact, if the statement is redacted

1 by the court to preclude disclosure of privileged
2 communication.

3 2. A statement filed under subparagraph a, b or c of paragraph
4 1 of subsection A or B of this section is not admissible in evidence
5 at trial. Information obtained as a result of a statement filed
6 under subsection A or B of this section is not admissible in
7 evidence at trial except to refute the testimony of a witness whose
8 identity subsection A of this section requires to be disclosed.

9 3. Upon the prosecuting attorney's request after the time set
10 by the court, the defendant shall allow him or her access at any
11 reasonable times and in any reasonable manner to inspect,
12 photograph, copy, or have reasonable tests made upon any book,
13 paper, document, photograph, or tangible object which is within the
14 defendant's possession or control and which:

- 15 a. the defendant intends to offer in evidence, except to
16 the extent that it contains any communication of the
17 defendant, or
18 b. is a report or statement as to a physical or mental
19 examination or scientific test or experiment made in
20 connection with the particular case prepared by and
21 relating to the anticipated testimony of a person whom
22 the defendant intends to call as a witness, provided
23 the report or statement is redacted by the court to
24 preclude disclosure of privileged communication.

1 C. Continuing Duty to Disclose.

2 If, prior to or during trial, a party discovers additional
3 evidence or material previously requested or ordered, which is
4 subject to discovery or inspection under the Oklahoma Criminal
5 Discovery Code, such party shall promptly notify the other party,
6 the attorney of the other party, or the court of the existence of
7 the additional evidence or material.

8 D. Time of Discovery.

9 Motions for discovery may be made at the time of the district
10 court arraignment or thereafter; ~~provided that requests for police~~
11 ~~reports may be made subject to the provisions of Section 258 of this~~
12 ~~title. However, a request pursuant to Section 258 of this title~~
13 ~~shall be subject to the discretion of the district attorney. All~~
14 issues relating to discovery, except as otherwise provided, will be
15 completed ~~at least ten (10) days prior to trial~~ within thirty (30)
16 days of receiving a request from the defendant but no fewer than ten
17 (10) days prior to trial. The court may specify the time, place and
18 manner of making the discovery and may prescribe such terms and
19 conditions as are just.

20 E. Regulation of Discovery.

21 1. Protective and Modifying Orders. Upon motion of the state
22 or defendant, the court may at any time order that specified
23 disclosures be restricted, or make any other protective order. If
24 the court enters an order restricting specified disclosures, the
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1 entire text of the material restricted shall be sealed and preserved
2 in the records of the court to be made available to the appellate
3 court in the event of an appeal.

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

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

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

1 SECTION 3. This act shall become effective November 1, 2022.

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