

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1755

BY: MAXEY, PILGRIM and  
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AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; CREATING THE  
OKLAHOMA CRIMINAL DISCOVERY CODE; PROVIDING SHORT  
TITLE AND SCOPE OF CODE; PROVIDING FOR  
CONSTRUCTION; DEFINING TERMS; PROVIDING FOR  
DISCLOSURE BY PROSECUTION AND DEFENSE; PERMITTING  
CERTAIN DISCLOSURES UPON ORDER OF THE COURT;  
EXCLUDING WORK PRODUCT FROM DISCOVERY; PROHIBITING  
IMPEDING OF INVESTIGATIONS; MANDATING A CONTINUING  
DUTY TO DISCLOSE; PROVIDING FOR TIME, PLACE, AND  
MANNER OF DISCOVERY AND INSPECTION; PROVIDING FOR  
CUSTODY OF MATERIALS; PROVIDING FOR PROTECTIVE  
ORDERS; PROVIDING FOR IN CAMERA PROCEEDINGS;  
PROVIDING FOR EXCLUSION OF MATERIALS; PROVIDING  
SANCTIONS; PROVIDING FOR FILINGS; PROVIDING FOR  
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2001 of Title 22, unless there is created a duplication in numbering, reads as follows:

Short Title and Scope of Code. Sections 1 through 17 of this act shall be known and may be cited as the "Oklahoma Criminal Discovery Code". The Oklahoma Criminal Discovery Code shall govern the procedure for discovery in all felony criminal cases in all courts in this state.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2002 of Title 22, unless there is created a duplication in numbering, reads as follows:

Construction. The Oklahoma Criminal Discovery Code shall be construed to protect the constitutional rights of all citizens charged with felony crimes and to provide efficient, informed resolution of all felony criminal cases.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2003 of Title 22, unless there is created a duplication in numbering, reads as follows:

Definitions. As used in the Oklahoma Criminal Discovery Code:

1. "Statements" means oral, written or recorded statements both sworn under oath and unsworn.

2. "Recorded statements" means statements preserved by any device.

3. "Code" means the Oklahoma Criminal Discovery Code.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2004 of Title 22, unless there is created a duplication in numbering, reads as follows:

Disclosure by Prosecution Without Order of the Court. Without order of court except as provided in Section 7 of this act the prosecution on request of the defendant within a reasonable time after the initial appearance before the court and prior to the preliminary hearing, shall allow access to all matters within the

prosecution's possession or control which relate to the case and make the following disclosures:

1. Witnesses; Other Persons with information relating to the case.
  - a. The prosecution shall disclose to the defendant the names and addresses of the persons intended to be called as witnesses for the prosecution and permit the defendant to inspect and reproduce such witnesses' written or recorded statements or written summaries of the witness' oral statements.
  - b. If the defendant is charged by indictment, the prosecution shall disclose to the defendant pursuant to Section 384 of Title 22 of the Oklahoma Statutes the names and addresses of the witnesses who testified before the grand jury in the case against the defendant.
  - c. In all cases prosecuted by information the prosecution shall disclose to the defendant the names and the addresses of persons having information relating to the case.

2. Statements. The prosecution shall disclose and permit the defendant to inspect and reproduce any written or recorded statements or written summaries of any oral statements which relate to the case within the possession or control of the prosecution.

3. Documents and Tangible Objects. The prosecution shall disclose and permit the defendant to inspect and reproduce books, law enforcement investigation reports, papers, documents, photographs and tangible objects which relate to the case and shall permit the defendant to inspect and photograph buildings or places which relate to the case.

4. Reports of Examinations and Tests. The prosecution shall disclose and permit the defendant to inspect and reproduce any

results or reports of physical or mental examination, scientific tests, experiments or comparisons made in connection with the particular case. If a scientific test or experiment of any matter may preclude any further tests or experiments, the prosecution shall give the defendant reasonable notice and an opportunity to have a qualified expert observe the test or experiment and to perform additional tests, if ordered by the court.

5. Criminal Record of Defendant and Defense Witnesses. The prosecution shall inform the defendant of the records of prior convictions of the defendant and prior convictions of prosecution witnesses that are known to the prosecution.

6. Exculpatory Information. The prosecution shall disclose to the defendant any material or information within the prosecution's possession and control relating to guilt or punishment that is favorable to the defendant.

7. Scope of Prosecutor's Obligations. The prosecution's obligations under this section extend to material and information in the possession or control of members of the prosecution staff and of any law enforcement agencies that have participated in the investigation or evaluation of the case.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2005 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Discretionary Disclosure Upon Order of the Court of Matters Possessed by Other Governmental Agencies. Upon motion of the defendant, the court for good cause shown shall require the prosecution, except as provided by Section 6 of this act, to assist the defendant in seeking access to specified matters relating to the case which are within the possession or control of an official or employee of any governmental agency, but which are not within the control of the prosecution. The prosecution shall use diligent good faith efforts to cause the official or employee to allow the

defendant access at any reasonable time and in any reasonable manner to inspect, photograph or copy any material, or have reasonable tests made.

B. Discretionary Disclosure of Other Material. Upon motion of the defendant, the court, in its discretion, at any time before trial may require the prosecution to disclose to the defendant and to permit the inspection, reproduction, or testing of any material, provided a showing is made that the information relates to the guilt or innocence of the defendant or mitigation of punishment.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2006 of Title 22, unless there is created a duplication in numbering, reads as follows:

Disclosure by Defendant Without Order of the Court. Without order of court and except as limited by Section 7 of this act the defendant, on request of the prosecution, shall, at least ten (10) days before the date set for trial, make the following disclosures:

1. Witnesses. The defendant shall supply the prosecution with the names and addresses of persons whom the defendant intends to call as witnesses together with their prior record of convictions, if any, within the defendant's actual knowledge.

2. Statements. The defendant shall disclose and permit the prosecution to inspect and reproduce any written or recorded statements or written summaries of any oral statements of any person whom the defendant intends to call as a witness other than the defendant.

3. Documents and Tangible Objects. The defendant shall disclose and permit the prosecution to inspect and reproduce books, papers, documents, photographs, and tangible objects which the defendant intends to offer evidence at the trial, and shall also permit the prosecution to inspect and photograph buildings or places concerning which the defendant intends to offer evidence at trial.

4. Reports of Examinations and Tests. The defendant shall disclose and permit the prosecution to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments and comparisons which the defendant intends to introduce in evidence at the trial.

5. Alibi. In the event the defense of alibi is raised, within a reasonable time thereafter, the prosecution shall inform the defendant of the names and addresses of the witnesses the prosecution intends to call at the trial to rebut the testimony of any of the defendant's alibi witnesses.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2007 of Title 22, unless there is created a duplication in numbering, reads as follows:

Work Product. Unless otherwise provided by this Code, legal research, records, correspondence, reports or memoranda, to the extent that these items contain the opinions, theories or conclusions of the defendant, prosecution, members of the defense or prosecution staff, individuals participating in the defense or prosecution, or investigative agencies, shall constitute work product and shall not be discoverable.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2008 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Disclosures Permitted Upon Order of the Court. Disclosures permitted upon motion of the prosecution or the defendant may be allowed upon a showing by the movant that the information is necessary to the prosecution or defense of the case. A judge may order a defendant to:

1. Appear in a lineup;
2. Speak for identification by witnesses to an offense or for the purpose of taking voice prints;

3. Be fingerprinted or permit the defendant's palm prints or footprints to be taken;
4. Permit measurements of the defendant's body to be taken;
5. Pose for photographs not involving reenactment of a scene;
6. Permit the taking of samples of the defendant's blood, hair, saliva, urine, and other materials of the defendant's body which involve no unreasonable intrusion;
7. Provide specimens of the defendant's handwriting; and
8. Submit to reasonable physical or medical inspection of the defendant's body.

B. Notice of Time and Place of Disclosures. Whenever the personal appearance of the defendant is required for the purposes provided in subsection A of this section, reasonable notice of the time and place thereof shall be stated in the court order.

C. Medical Supervision. Blood tests shall be conducted under medical supervision, and a judge may require medical supervision for any other test ordered pursuant to this section.

D. Notice of Results of Disclosure. The results of any discovery procedures shall be made available to opposing counsel within five (5) days from the date of receipt of the results.

E. Other Methods Not Excluded. The discovery procedures provided for by this section do not exclude other lawful methods available for obtaining evidence.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2009 of Title 22, unless there is created a duplication in numbering, reads as follows:

Investigations Not to be Impeded. Except as otherwise provided, neither the counsel for the parties nor other prosecution or defense personnel shall impede opposing counsel's investigation of the case.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2010 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Duty to Disclose Subsequent Material. If subsequent to compliance with any provision of the Code or any court order, a party discovers additional material, information or witnesses subject to disclosure, that party promptly shall notify the other party of the existence of the additional material or information and the identity of the witnesses.

B. Continuing Duty to Disclose. Each party shall have a continuing duty at all times before and during trial to supply the materials and information required by the Oklahoma Criminal Discovery Code.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2011 of Title 22, unless there is created a duplication in numbering, reads as follows:

Time, Place and Manner of Discovery and Inspection. An order of the court granting discovery shall specify the time, place, and manner of making the discovery and inspection permitted and may prescribe reasonable terms and conditions.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2012 of Title 22, unless there is created a duplication in numbering, reads as follows:

Custody of Materials. Any materials produced pursuant to this Code and court orders issued pursuant thereto shall be preserved by the party receiving the materials. The materials produced shall be used only for the investigation and preparation for the preliminary hearing and trial of the case.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2013 of Title 22, unless there is created a duplication in numbering, reads as follows:

Protective Orders. Upon motion of the prosecution or defendant, the court at any time may order that specified disclosures be restricted or make any other appropriate protective order.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2014 of Title 22, unless there is created a duplication in numbering, reads as follows:

In Camera Proceedings. Upon application of the prosecution or defendant, the judge may conduct hearings concerning discovery or allow responses to discovery requests to be made in camera. A record shall be made of any proceedings conducted in camera. If the judge enters an order granting relief following a hearing in camera, the entire record of such showing shall be sealed and preserved in the records of the court for use at preliminary hearing, trial, in the event of an appeal, habeas corpus proceedings, or post-conviction proceedings.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2015 of Title 22, unless there is created a duplication in numbering, reads as follows:

Excluded Material. If some parts of certain material are discoverable pursuant to this Code, and other parts not discoverable, as much of the material shall be disclosed as is consistent with this Code. Material excised pursuant to court order shall be sealed and preserved in the records of the court to be made available for review in the event of an appeal, habeas corpus proceedings, or post-conviction proceedings.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2016 of Title 22, unless there is created a duplication in numbering, reads as follows:

Sanctions. If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with an applicable discovery statute or order, the court, upon motion and notice, may order such party to permit the discovery or inspection, grant a continuance, or enter any appropriate order, including but not limited to dismissal of the case without

prejudice. The judge shall not prohibit the defendant from introducing evidence or witnesses' material to the defense.

Any person who willfully disobeys a court order made pursuant to the provisions of this Code shall be subject to the contempt powers of the court. In determining whether the party has willfully disobeyed a court order, the court shall consider:

1. the reason for the failure to comply with the order;
2. whether and to what extent the failure prejudiced the opposing side;
3. whether events subsequent to the noncompliance mitigate the prejudice to the opposing side;
4. any other factors arising out of the circumstances of the case.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2017 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Filing of Discovery Documents. Unless required by court order, discovery disclosures made pursuant to this Code shall not be filed with the court clerk.

B. Filing of Descriptive List. The party making disclosures pursuant to the Code shall prepare an itemized descriptive list identifying the discovery material without disclosing the contents of the material and shall file the list with the court clerk.

SECTION 18. This act shall become effective September 1, 1991.

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