

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1838

BY: MONKS

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1991, SECTIONS 258 AND 259, WHICH RELATE TO PRELIMINARY EXAMINATIONS; PROVIDING THAT CERTAIN PERSONS SHALL NOT BE REQUIRED TO GIVE TESTIMONY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 258, is amended to read as follows:

Section 258. First: ~~The~~ Except as otherwise provided in this section, the witnesses must be examined in the presence of the defendant, and may be cross-examined by him. On the request of the district attorney, or the defendant, all the testimony must be reduced to writing in the form of questions and answers and signed by the witnesses, or the same may be taken in shorthand and transcribed without signing, and in both cases filed with the clerk of the district court, by the examining magistrate, and may be used as provided in ~~22 O.S. 1991,~~ Section 333 of this title. In no case shall the county be liable for the expense in reducing such testimony to writing, unless ordered by the judge of a court of record.

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

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

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

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

Sixth: In the preliminary examination of any felony involving the abuse of a child under sixteen (16) years of age, whether such abuse is alleged to be physical or sexual, the state shall not be required to present the testimony of the alleged victim but may rely upon statements made by the victim in order to establish, along with

all other admissible evidence, whether a public offense has been committed and whether there is sufficient cause to believe the defendant guilty thereof. Statement to be admitted shall include, but not be limited to, those statements made to investigating officers, representatives of social service agencies, medical or psychological professionals, teachers or school counselors, or adult relatives of the alleged victim. Such statements shall be admitted notwithstanding any other provision of law and the weight given any such statement shall be determined by the magistrate.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 259, is amended to read as follows:

Section 259. When the examination of the witnesses on the part of the state is closed, any witnesses the defendant may produce must be sworn and examined, except that the defendant shall not, over the objection of the state, call the alleged victim of either physical or sexual abuse to testify, if such victim is under sixteen (16) years of age.

SECTION 3. This act shall become effective September 1, 1992.

43-2-7411 SD