

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2481

BY: HAGER and SETTLE

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; STATING LEGISLATIVE INTENT; PROVIDING AUTHORIZATION FOR DISTRICT ATTORNEYS, UPON APPROVAL OF CERTAIN JUDGES, TO ISSUE INVESTIGATIVE SUBPOENAS; PROVIDING PROCEDURE FOR OBTAINING SUCH APPROVAL; PROVIDING PROCEDURE FOR ISSUANCE, SERVICE AND ENFORCEMENT OF SUCH SUBPOENAS; PROVIDING FOR RECORDING AND TRANSCRIBING THE TESTIMONY OF WITNESSES; PROVIDING CERTAIN RIGHTS FOR WITNESSES; PROVIDING A PROCEDURE FOR ENFORCING DECORUM AT SUCH PROCEEDINGS; PROVIDING RESTRICTIONS UPON USE AND DISCLOSURE OF EVIDENCE OBTAINED THROUGH DISTRICT ATTORNEY SUBPOENAS; PROVIDING A PROCEDURE FOR CHALLENGING THE ENFORCEMENT OF SUCH SUBPOENAS; PROVIDING FOR PAYMENT OF WITNESS FEES AND PAYMENT OF COSTS OF TRANSCRIPTION OF TESTIMONY; AMENDING 22 O.S. 1991, SECTION 258, WHICH RELATES TO PRELIMINARY EXAMINATIONS; REMOVING LANGUAGE PERTAINING TO CERTAIN SUBPOENAS ISSUED BY DISTRICT ATTORNEYS; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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 20 of Title 22, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature to authorize district attorneys acting within their role as public accusers the same power for obtaining evidence through subpoenas that may be obtained by a grand jury without disturbing the power of the district attorney to further investigate pending felony actions.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The district attorney of any county within this state shall be entitled to take the sworn oral statement of any person who has, or is reasonably believed to have, knowledge or information which would aid the district attorney, an assistant district attorney, or other law enforcement agencies of the state or its subdivisions toward the investigation or prosecution of public offenses committed, or believed to have been committed, within said county, upon compliance with and under the provisions provided in this section.

B. The district attorney may file a written verified application, based upon knowledge or belief, with any judge of the county wherein the offense charged or under investigation may have occurred. The hearing on the application shall be in camera and ex parte. The court shall, upon proper grounds having been shown in said application, approve said application allowing the district attorney to issue subpoenas duces tecum and/or ad testificandum directed to any person within the state to appear before the district attorney at a specific date and time during regular business hours of said office to give sworn testimony.

C. Said application shall state the following:

1. That felony charges have been filed by the district attorney alleging the commission of one or more public offenses within the county, reciting the name of the victim(s), the approximate date(s) the felony crime(s) was(were) committed, the number of the case(s) pending and the statutory citation of the crime(s) charged; or

2. That the applicant has reasonable cause to believe that one or more felony offenses have been committed, or that there exists reasonable cause to believe that felony offenses have been committed, which are triable in the county, reciting the name(s) of the victim(s), the statutory citation of the offense(s) alleged, and the approximate date(s) of the offense(s); and

3. That the issuance of subpoenas is necessary and that it is in the public interest that witnesses be subpoenaed to produce tangible evidence and/or testify as to matters and things in their knowledge after first being sworn; and

4. That the application is brought in good faith and is not for the purposes of annoying, embarrassing or oppressing the witness(es) or any other persons.

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

Upon being presented by the district attorney or an assistant district attorney with such application, the judge shall determine whether the application is brought in good faith regarding a felony offense or offenses triable in the county and for that purpose may inquire about facts known to the applicant regarding such offense or offenses as set forth in the application. The judge shall then approve or disapprove the application by written order entered upon the minutes of the court and filed in the miscellaneous public record of the court. All records of the proceedings shall be sealed and kept confidential.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 23 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Upon receiving judicial approval, the district attorney may issue subpoenas for witnesses to appear and give evidence before the district attorney; said subpoenas shall be served according to the same procedure applicable to subpoenas in criminal actions; provided, that said subpoenas must be served at least seventy-two (72) hours prior to the time each witness is to appear. Provided further, that proof of service regarding such subpoenas shall be made to the district attorney and filed with the district attorney as part of his investigative files and neither the subpoenas nor the return of service shall be an open public record.

B. Upon timely written, verified response by the witness, stating that by reason of physical impossibility or other sufficient reason the witness cannot appear at the location set by the district attorney, the location may be changed and a reasonable continuance granted at the discretion of the district attorney and with reasonable notice to the witness.

C. Upon the failure to appear of any witness who was duly subpoenaed, or upon the refusal of the witness to be sworn or to testify, the district attorney may file an application for a contempt citation with the court, to be heard as are citations for contempt in civil actions.

D. If testimony is required pursuant to the command of a subpoena issued by the district attorney, the witness shall first be sworn before some officer authorized to administer oaths, using the same oath applicable to witnesses in an action before the district court. The entire testimony of the witness shall be recorded before a licensed court reporter. The testimony of said witness shall be taken in a closed proceeding, attended only by the district attorney and/or an assistant district attorney, the court reporter, the

witness and the attorney of the witness, if the witness is accompanied by an attorney. The original and two copies of a transcript of the recorded testimony shall be prepared and certified by the reporter and the witness given a reasonable opportunity to review, correct and approve the transcript as in a deposition. The licensed court reporter shall then file the original and all copies of such transcripts with the district attorney and such transcripts shall become part of the investigative files of the district attorney and shall not be an open public record. Said records shall constitute work product of the district attorney and be subject to all the provisions accorded said work product. Said records shall be kept confidential except to other law enforcement agencies actually involved in the investigation or prosecution, or unless disclosure is ordered by the court. The fee charged by the licensed court reporter for producing the original transcript and copies shall not exceed the fee prescribed by Section 106.4 of the Title 20 of the Oklahoma Statutes. If production of a document and/or other tangible item is required pursuant to the command of the subpoena issued by the district attorney, the witness shall either produce the document or item at the office of the district attorney or otherwise make the document or item available for the district attorney to examine.

E. Evidence received pursuant to a subpoena issued by the district attorney shall not be received in any civil proceeding.

F. If counsel appears with the witness, counsel for the witness shall be allowed to be present during all questioning of the witness and shall be allowed to advise the witness but shall make no objections or arguments or otherwise address the district attorney conducting the examination. Violation of this subsection may be punished as a contempt on complaint and showing to the district court that proper cause exists therefor. The district attorney may request the judge who authorized the investigation to expel an

attorney from the investigative proceeding upon all grounds available to a court for expulsion of an attorney from a court proceeding including, but not limited to, conflict of representation.

G. Investigative proceedings before the district attorney, like the proceedings before a grand jury, shall be ex parte and secret. Except as expressly provided in this section, facts received by the district attorney pursuant to an investigative subpoena shall not be disclosed.

H. Facts received by the district attorney pursuant to an investigative subpoena may be disclosed only:

1. If offered as evidence in support of an affidavit of probable cause for issuance of a search or arrest warrant;
2. If offered as evidence at a preliminary hearing or trial;
3. If offered as evidence before a grand jury as now provided in Section 333 of Title 22 of the Oklahoma Statutes;
4. If deemed by the district attorney to be essential to effective law enforcement, in which case the evidence may be privately disclosed to the Attorney General of Oklahoma or another public prosecutor having concurrent jurisdiction over the criminal activity investigated or other law enforcement agencies having concurrent jurisdiction over the criminal activity, who shall only disclose such facts as provided for in this section; or
5. If so directed by the court.

I. Upon request by an accused, evidence received pursuant to an investigative subpoena shall be disclosed to an accused pursuant to Sections 340 and 749 of Title 22 of the Oklahoma Statutes.

J. Any district attorney, assistant district attorney, district investigator and other staff of the district attorney, law enforcement officer, necessary interpreter, stenographer, court reporter, or typist transcribing testimony of witnesses appearing before the district attorney, having knowledge of matters occurring

in a district attorney investigation conducted pursuant to this act shall be sworn to secrecy and may be punished in the manner prescribed for a contempt of court if any such person reveals any information which they are sworn to keep secret.

K. No witness shall be prohibited from disclosing his or her own testimony given to the district attorney except for cause shown in a hearing before the judge who authorized the issuance of the investigative subpoenas. In no event shall a witness be prevented from disclosing his own testimony to his attorney.

L. Powers conferred in this act to the district attorney may also be exercised by an assistant district attorney of the same district or a special prosecutor within scope of his appointment pursuant to Section 215.9 of Title 19 of the Oklahoma Statutes.

M. Costs of the investigation, including but not limited to, witness fees and the cost of transcribing the testimony of witnesses, shall be paid by the district attorney for the county in which the investigation is authorized. Witnesses appearing pursuant to a district attorney investigative subpoena are entitled to claim the same fee and expenses as witnesses subpoenaed to criminal proceedings before the district court. Such claim shall be verified by the witness, filed with the district attorney, and paid in the same manner as similar claims filed with the district court clerk.

N. The costs incurred in the investigation may, upon application of the district attorney, be assessed and collected as costs and returned to the district attorney by the Court against any defendant whose conviction results from evidence obtained through the investigation.

O. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the district attorney pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business

papers or records that are the subject of a subpoena duces tecum. A violation of the provisions of this subsection, upon conviction, is a misdemeanor.

P. Nothing contained in this act shall limit the powers conferred upon the district attorney by any other provisions of the statutes of this state to subpoena witnesses in pending criminal or civil matters or in support of the grand jury.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24 of Title 22, unless there is created a duplication in numbering, reads as follows:

All challenges to the enforcement of a district attorney investigative subpoena shall in the first instance be presented to the judge who authorized the issuance of such subpoena. The challenge shall be in writing, verified by the person required to appear, and filed with the court at least twenty-four (24) hours prior to the time set for appearance. If the judge who authorized the issuance of the subpoena is unavailable to promptly hear such challenge, such challenge may be presented to any other available judge of the district court for the county in which the subpoena was issued.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 258, is amended to read as follows:

Section 258. ~~First:~~ A. 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. 1951,~~ 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: B.~~ 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: C.~~ 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: D.~~ There shall be no preliminary examinations in misdemeanor cases.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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