STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 396 BY: WRIGHT

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; CREATING THE OKLAHOMA CRIMINAL DISCOVERY CODE; AUTHORIZING CERTAIN DISCLOSURE BY PROSECUTION WITHOUT COURT ORDER; PROVIDING FOR CERTAIN DISCRETIONARY DISCLOSURES UPON COURT ORDER; STATING NONDISCOVERABLE INFORMATION; PROVIDING FOR DISCLOSURE BY DEFENDANT WITHOUT COURT ORDER; REQUIRING CERTAIN DISCOVERY UPON COURT ORDER; REQUIRING NOTICE; AUTHORIZING CERTAIN MEDICAL TESTS; PROHIBITING IMPEDIMENTS TO INVESTIGATION; PROVIDING FOR ADDITIONAL DISCOVERY; REQUIRING COURT TO STATE TIME, PLACE AND MANNER OF CERTAIN DISCOVERY OR INSPECTIONS; DIRECTING CUSTODY OF MATERIALS; PROVIDING FOR IN CAMERA INSPECTION IN CERTAIN CIRCUMSTANCES; REQUIRING CERTAIN SEALED RECORDS; PROVIDING FOR EXCISED MATERIALS; PROVIDING FOR SANCTIONS; STATING CERTAIN CONSIDERATION FOR COURT; REQUIRING A LIST TO BE FILED; 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 1500 of Title 22, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Criminal Discovery Code".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1501 of Title 22, unless there is created a duplication in numbering, reads as follows:

Without court order, except as provided in Section 4 of this act, the prosecution on request of defense counsel shall, at least ten (10) days before the date set for preliminary hearing, allow access at any reasonable time to all matters within the prosecution's possession or control which relate to the case and make the following disclosures:

1. Witnesses and other persons:

   a. the prosecution shall disclose to defense counsel the names and addresses of the persons intended to be called as witnesses together with their prior record of convictions, if any, within the prosecution's actual knowledge. The prosecution shall permit defense counsel to inspect and reproduce such witnesses' relevant written or recorded statements and any written summaries within the prosecution's knowledge of the substance of relevant oral statements made by such witnesses to prosecution agents,

   b. the fact that the prosecution has supplied the name of a trial witness to defense counsel shall not be commented on in the presence of the jury,

   c. if the defendant is charged by indictment, the prosecution shall disclose to defense counsel the names and addresses of the witnesses who testified

before the grand jury in the case against the defendant, and

d. the prosecution attorney shall disclose to defense counsel the names and the addresses of persons having information relating to the case;

2. Statements:

The prosecution shall disclose and permit defense counsel to inspect and reproduce any relevant written or recorded statements which relate to the case within the possession or control of the prosecution, and shall provide defense counsel with the substance of any oral statements which relate to the case, except as provided in Section 4 of this act;

3. Documents and tangible objects:

The prosecution shall disclose and permit defense counsel to inspect and reproduce books, law enforcement officer reports, papers, documents, photographs and tangible objects which relate to the case and shall also permit defense counsel to inspect and photograph buildings or places which relate to the case;

4. Reports of examinations and tests:

The prosecution shall disclose and permit defense counsel 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. The prosecution shall allow the defendant to have reasonable tests made. 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 experience;

5. Criminal record of defendant and defense witnesses:

The prosecution shall inform defense counsel of the records of prior convictions of the defendant and of any defense witnesses that

are known to the prosecution, provided that defense counsel informs the prosecution of any such records known to the defendant;

6. Exculpatory information:

The prosecution shall disclose to defense counsel any materials or information within the prosecution's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged, or in mitigation of punishment; and

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 and who either regularly report or with reference to the particular case have reported to the prosecution.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1502 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Upon motion of the defendant, the court for good cause shown shall require the prosecution, except as provided by Section 4 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, copy, or have reasonable tests made.

B. Upon motion of the defendant, the court for good cause shown may require the prosecution to provide for defendant to participate in a lineup, to speak for identification by witnesses or to participate in other procedures which would require a court order to accomplish.

C. Upon motion of the defendant, the trial court at any time before trial may, in its discretion, require the prosecution to disclose to defense counsel and to permit the inspection, reproduction or testing of any relevant material and information not subject to disclosure without order of court under Section 7 of this act, provided however, a showing is made that the information may relate to the guilt or innocence of the defendant or negate the guilt or reduce the culpability of the defendant as to the offense charged. If the motion is denied, the court upon application of the defendant shall inspect and preserve any such relevant material and information.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1503 of Title 22, unless there is created a duplication in numbering, reads as follows:

The following information shall not be discoverable by the defendant:

1. Opinions, theories or conclusions:

Unless otherwise provided by these rules, legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecution or members of the prosecution staff or official agencies participating in the prosecution; and

2. Reports:

Except as provided in Section 3 of this act, reports, memoranda or internal documents made by the prosecution or members of the prosecution staff or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1504 of Title 22, unless there is created a duplication in numbering, reads as follows:

Without court order, except as provided in Section 8 of this act, the defendant on request of the prosecution shall before ten

(10) days before the date set for preliminary hearing make the following disclosures:

1. 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;

2. 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 made in connection with the particular case within the possession or control of the defendant which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness;

3. Notice of defense witnesses and criminal records:

The defendant shall supply the prosecution with the names and addresses of persons whom the defendant intends to call as witnesses at the trial other than the defendant, together with their record of convictions, if any, within the defendant's actual knowledge;

4. Statements of defense and prosecution witnesses:

The defendant shall permit the prosecution to inspect and reproduce any relevant written or recorded statements of the persons whom the defendant intends to call as witnesses at the trial other than the defendant, and also statements of prosecution witnesses obtained by the defendant, defense counsel, or persons participating in the defense, and which are within the possession or control of the defendant and shall permit the prosecuting attorney to inspect and reproduce any written summaries within the defendant's knowledge

of the substance of any oral statements made by such witnesses of defense counsel or obtained by the defendant at the direction of defense counsel; and

5. Alibi:

In the event the defense of alibi is raised in accordance with Section 585 of Title 22 of the Oklahoma Statutes, then as soon as practicable, the prosecution shall then 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1505 of Title 22, unless there is created a duplication in numbering, reads as follows:

The fact that a witness' name is on a list furnished by the defendant to the prosecution under this rule shall not be commented on in the presence of the jury.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1506 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Upon motion of the prosecution with notice to defense counsel and a showing that one or more of the discovery procedures hereafter described will be of material aid in determining whether the defendant committed the offense charged, the trial court at any time before trial may, subject to constitutional limitations, 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 re-enactment 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 thereof; provided, however that the court shall not permit a blood test to be taken except upon a showing of probable cause to believe that the test will aid in establishing the guilt of the defendant;

7. Provide specimens of the defendant's handwriting; and

8. Submit to reasonable physical or medical inspection of the defendant's body.

B. Whenever the personal appearance of the defendant is required for the foregoing purposes, reasonable notice of the time and place thereof shall be given by the prosecution to defense counsel.

C. Blood tests shall be conducted under medical supervision, and the court may require medical supervision for any other test ordered pursuant to this section when the court deems such supervision necessary. Upon motion of the defendant, the court may order the defendant's appearance delayed for a reasonable time or may order that it take place at the defendant's residence, or some other convenient place.

D. Unless otherwise ordered by the court, the prosecution, within five (5) days from the date the results of the discovery procedures provided by this section become known, shall make available to defense counsel a report of the results.

E. The discovery procedures provided for by this section do not exclude other lawful methods available for obtaining the evidence discoverable under this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1507 of Title 22, unless there is created a duplication in numbering, reads as follows:

Unless otherwise provided by these rules, legal research, records, correspondence, reports or memoranda to the extent they

contain the opinions, theories, or conclusions of the defendant or defense counsel or persons participating in the defense are not subject to disclosure.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1508 of Title 22, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided as to matters not subject to discovery or covered by protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information, except the accused, to refrain from discussing the case with opposing counsel or from showing opposing counsel any relevant materials, nor shall they otherwise 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 1509 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If subsequent to compliance with any discovery rule or order, a party discovers additional material, information or witnesses subject to disclosure, that party shall promptly notify the other party of the existence of the additional material or information and the identity of the witnesses.

B. Each party shall have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1510 of Title 22, unless there is created a duplication in numbering, reads as follows:

An order of the court granting discovery shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1511 of Title 22, unless there is created a duplication in numbering, reads as follows:

Any materials furnished to an attorney under discovery rules or orders shall remain in the custody of and be used by the attorney only for the purpose of conducting that attorney's side of the case, and shall be subject to such other terms and conditions as the court may prescribe.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1512 of Title 22, unless there is created a duplication in numbering, reads as follows:

Upon a showing of cause, the trial court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate. All material and information to which a party is entitled must be disclosed in time to afford counsel the opportunity to make beneficial use of it.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1513 of Title 22, unless there is created a duplication in numbering, reads as follows:

Upon application of any party with notice to the adverse party, the trial court upon a showing of good cause therefore may permit any showing of cause for denial or regulation of discovery, or portion of such showing, to be made in camera. A record shall be made of the proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court 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 1514 of Title 22, unless there is created a duplication in numbering, reads as follows:

When some parts of certain material are discoverable under these rules, and other parts not discoverable, as much of the material shall be disclosed as is consistent with discovery statutes. Material excised pursuant to judicial order shall be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal, habeas corpus proceeding, or post-conviction proceedings.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1515 of Title 22, unless there is created a duplication in numbering, reads as follows:

If at any time during the course of the proceedings it is brought to the attention of the trial court that a party has failed to comply with an applicable discovery statute or order, the court may upon motion and notice, order such party to permit the discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances. The court shall not prohibit the defendant from introducing evidence or witnesses material to the defense. Any person who wilfully disobeys a court order under these discovery rules may be held in contempt. In determining whether the party has wilfully 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; and

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 1516 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Unless the court orders otherwise for the purpose of a hearing or trial, discovery disclosures made pursuant to this act shall not be filed with the district court clerk.

B. The party making the disclosures shall prepare an itemized descriptive list identifying the disclosures without disclosing their contents and shall file the list only with the district court clerk.

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

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