

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 578

BY: WRIGHT

AS INTRODUCEDAN 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; PROVIDING FOR DEPOSITIONS AND TRANSCRIPTS; 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; REPEALING 22 O.S. 1981, SECTIONS 585 AND 749; 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 18 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 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 crimes and to provide efficient, informed resolution of all 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 and 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 in a felony case, or prior to trial in a misdemeanor case, or within a reasonable time before trial if the request is made after 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 and 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 notes, 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 Prosecution Witnesses. The prosecution shall inform the defendant of the records of prior convictions of the defendant and prior convictions of prosecution witnesses, if any, that are known to the prosecution, Oklahoma State Bureau of Investigation, or any law enforcement agency that has participated in the investigation or evaluation of the case. The prosecution shall request criminal record inquiries through a serving agency to which the prosecution has been assigned by the Oklahoma Law Enforcement Telecommunications System. Administrative messages requesting criminal history transcripts on persons having a prior conviction shall be sent to the Oklahoma State Bureau of Investigation.

6. Exculpatory Information. The prosecution shall disclose to the defendant any material or information within the prosecution's possession and control or knowledge of any material or information not within the possession or control of the prosecution relating to guilt or punishment that is favorable to the defendant.

7. Alibi. If the defense of alibi is raised, within a reasonable time prior to trial, 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.

8. Scope of Prosecutor's Obligations. The prosecution's obligation pursuant to this section extends 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. Inspection of Buildings, Places or Things Not In Control of Prosecution or Defendant. The inspection of a building, place or thing not in the control of the prosecution or defendant may be ordered by the court upon a showing that the inspection is necessary. Upon motion of either party with notice to the other party and to the person in possession, custody or control of the property involved, the court may make any order in regard to property in the possession, custody or control of a person who is not a party to the action that it could make under this Code.

B. Notice and Service. Upon filing the motion for inspection pursuant to this section, the movant shall give notice to the opposing party by serving a copy of the motion and notice for hearing. The person in possession, custody or control of the property shall be served as required for service of summons. The notice shall state the date, time and place of the hearing on the motion and the date shall be not less than five (5) days after the service on the person in possession, custody or control. The court in its discretion may set a shorter time. If the motion is granted the order shall specify the time, place, manner, scope and conditions of making the inspection and performing any related actions permitted by this Code. The order further may provide that the nonmovant may perform any act that the movant could have performed after the movant has completed the inspection.

C. 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 punishment of the defendant.

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 defense 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. The defense shall designate those witnesses, if any, who will be called to show that the defendant was not present at the time and place specified in the information or indictment.

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 as evidence at the trial, and shall permit the prosecution to inspect and photograph buildings or places concerning which the defendant intends to offer as 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. If the defendant intends to assert the defense of alibi at trial, in addition to complying with the provisions of paragraph 1 of this subsection, the defendant shall give notice to the prosecution of the intent to claim such alibi, which notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense. Notice shall be served upon the prosecution at least ten (10) days prior to trial.

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 under this Code.

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 crime;
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. The obtaining of blood samples from the defendant 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, including the taking of depositions.

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:

A. At any time after the filing of the indictment or information the parties may take the deposition upon oral examination of any person who may have information relevant to the offense charged. The deposition shall be taken in the county courthouse, such other place agreed upon by the parties or where the trial court may designate by court order. The defendant shall give five (5) days' notice to the district attorney, deponent, and any

co-defendants. The notice shall state the time and place the deposition is to be taken and the name of each person to be examined. After notice to the district attorney, the witness, and co-defendant, the court may for good cause shown, extend or shorten the time and may change the place of the deposition. Except as provided herein, the procedure for taking such deposition, including the scope of the examination, shall be the same as that provided in the Code of Civil Procedure unless said rules conflict with the provisions of the Code of Criminal Procedure. Any deposition taken pursuant hereto may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. The trial court shall, upon application, issue subpoenas for the persons whose depositions are to be taken. In any case, including multiple defendant or consolidated cases, no person shall be deposed more than once except by consent of the parties, or by order of the court issued upon good cause shown. A resident of the state may be required to attend an examination only in the county wherein he resides, or is employed, or regularly transacts his business in person. A person who refuses to obey a subpoena served upon him may be adjudged in contempt of the court from which the subpoena issued.

B. No transcript of a deposition for which a county or the state may be obligated to expend funds shall be ordered by a party unless it is:

1. Agreed between the state and any defendant that the deposition should be transcribed and a written agreement certifying that the deposed witness is material or specifying other good cause is filed with the court; or

2. Ordered by the court upon a showing that the deposed witness is material or upon a showing of good cause.

C. The defendant shall have the right to be present during the deposition. If the defendant is incarcerated, the deposition shall be conducted in the county courthouse.

D. The deposition of an expert witness shall be conducted by telephone unless otherwise agreed to between the parties or pursuant to an order of the court.

E. Unless ordered by the court upon a showing of good cause, a witness who has testified during a preliminary hearing shall not be deposed.

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:

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

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:

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 Code.

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:

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 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:

Custody of Materials. Any materials produced pursuant to this Code and court orders issued pursuant thereto shall be preserved by the party who intends to offer the materials into evidence. The materials produced shall be used solely for the investigation and preparation for the preliminary hearing and trial of the case.

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:

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 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:

In Camera Proceedings. Upon application of the prosecution or defendant, the judge may conduct hearings concerning discovery or allow responses to discovery requests made in camera. A record shall be made of any proceedings conducted in camera. If the judge enters an order 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 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:

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 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. 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, exclude evidence, or enter any appropriate order, including but not limited to dismissal of the case with or without prejudice. In determining what sanctions, if any, to impose, 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 the failure to comply was willful;
4. Whether events subsequent to the noncompliance mitigate the prejudice to the opposing side; and
5. Any other factors arising out of the circumstances of the case.

B. Contempt. 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.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2018 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 19. REPEALER 22 O.S. 1981, Sections 585 and 749, are hereby repealed.

SECTION 20. This act shall become effective September 1, 1992.

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