

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1530

By: Settle of the House

and

Wright of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; creating the Oklahoma Criminal Discovery Code; providing short title and scope of code; providing for construction of code; defining terms; authorizing court to act on pretrial motions; providing for certain written orders; setting certain time limits; granting defendant certain rights; requiring the state to make certain disclosures; requiring the defense to make certain disclosures; empowering the court to order sanctions for noncompliance; providing for conditional examination by deposition; providing for certain costs; providing for deposit of certain monies collected; amending 22 O.S. 1991, Section 513, which relates to pleas to indictment or information; adding a plea; 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:

Sections 1 through 9 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:

The Oklahoma Criminal Discovery Code shall be construed so as 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:

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;
4. "Criminal case" shall include all cases which are prosecuted by a criminal information or petition to adjudicate for delinquent acts in a juvenile proceeding, and shall include proceedings to determine competency pursuant to Section 1175.1 et seq. of Title 22 of the Oklahoma Statutes;
5. "Disclose" means to permit inspection, photographing, copying, or having a reasonable test performed; and
6. "Defendant" means the defendant or defendant's attorney.

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:

After initial appearance in either a misdemeanor case or delinquency proceedings in a juvenile case, or in a felony case upon the entry of the bind over order, the district court is empowered to act upon any pretrial motion, including requests for discovery. Although the assigned district court judge may issue a discovery order at any stage of the proceedings following the bind over, the most appropriate time is at the formal arraignment. At that time, the judge shall enter a written order setting forth discovery, inspection and copying requirements for each party and a time for compliance. All issues relating to discovery shall be completed at least twenty (20) days prior to trial, except for newly discovered evidence as determined in an in camera hearing.

Provided however, after initial appearance and before the preliminary hearing, the defendant shall have the right to examine and review statements and reports, including OSBI reports but excluding statements or reports by confidential informants, in the prosecuting attorney's possession at that time, and if necessary, copy individual documents at the defendant's expense.

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:

The state shall be required to disclose the following:

1. Upon the request of the defense, the prosecuting attorney shall disclose to defense counsel all of the material and information within the prosecutor's possession or control including but not limited to:

- a. the names and addresses of persons known to the state who have knowledge of the facts or information about the case, together with their relevant oral, written and/or recorded statement,
- b. any written or recorded statements made by the accused or made by a codefendant, if such exist, and if an oral statement has been given, the substance of any oral statement,
- c. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons,
- d. any books, papers, documents, photographs, tangible objects, buildings, or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused,
- e. any record of prior criminal convictions of the defendant or of any codefendant, and
- f. OSBI or FBI rap sheet/records check on any witness listed by the state or the defense as a possible witness who will testify at the trial;

2. The prosecuting attorney shall disclose to defense counsel any material or information within the prosecutor's possession or control which tends to negate the guilt of the accused as the offense charged or which would tend to reduce the punishment of the accused; and

3. The prosecuting attorney's obligations under this standard extend to material and information in the possession or control of members of the prosecutor's staff and of any other who either regularly report or, with reference to the particular case, have reported to the prosecutor's office.

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:

The defense shall be required to disclose the following:

1. Upon the request of the prosecution, the defense attorney shall disclose to the prosecuting attorney all of the material and information within the defense attorney's possession or control, within the constraints established by this act, as follows:

- a. the names and addresses of witnesses, whom the defendant intends to call at trial, together with their relevant oral, written or recorded statement,
- b. the names and addresses of any witnesses the defendant will call, other than himself, for the testimony relating to any mental disease, mental defect, or other condition bearing upon his mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, if the statement is redacted by the court to preclude disclosure of privileged communication,
- c. a statement filed under subparagraph a or b of this paragraph or information obtained as a result of a statement filed under these subparagraphs is not admissible in evidence at trial except to refute the testimony of a witness whose identity is required to be disclosed;

2. Upon the prosecuting attorney's request after the time set by the court, the defendant shall disclose to the prosecutor any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

- a. the defendant intends to offer in evidence, except to the extent that it contains any communication of the defendant,
- b. is a report or statement as to a physical or mental examination or scientific test or experiment made in connection with the particular case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is redacted by the court to preclude disclosure of privileged communication, or
- c. if the defense subsequently ascertains that it has possession or control of such a matter, the defendant shall promptly so inform the prosecuting attorney. The fact that the defendant, under this subparagraph, has indicated an intent to offer a matter in evidence or to call a person as a witness is not admissible in evidence at trial. Information obtained as a result of disclosure under this subparagraph is not admissible in evidence at trial except to refute the matter disclosed. Provided further, that the trial judge shall ensure all discovery orders do not violate the defendant's right against self-incrimination.

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:

A. The trial court shall be empowered to order the following sanctions for noncompliance:

1. If the prosecuting attorney fails to comply with the discovery order, the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include, but

is not limited to, one or more of the following: requiring the prosecuting attorney to, comply, granting the defendant additional time or a continuance, relieving the defendant from making a disclosure required by court pursuant to the Oklahoma Criminal Discovery Code, prohibiting the prosecuting attorney from introducing specified evidence or calling specified witnesses, or dismissing charges; and

2. If the defendant fails to comply with the discovery order, the court on motion of the prosecuting attorney or on its own motion shall grant appropriate relief, which may include, but is not limited to, one or more of the following: requiring the defendant to comply, granting the prosecuting attorney additional time or a continuance, prohibiting the defendant from introducing specified evidence or calling specified witnesses, and granting a mistrial based on manifest necessity due to the acts of the defendant.

B. The sanctions relating to prohibiting either party from introducing specified evidence or calling a specified witness pertain to items or persons required to be disclosed by the court's discovery order, if the party against whom the sanction is sought has failed to comply with the order or show good cause as to why the party failed to comply.

C. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 762a of Title 22, unless there is created a duplication in numbering, reads as follows:

If the state endorses additional witnesses after preliminary hearing, or if a subpoenaed witness fails to appear at preliminary hearing, in a criminal case the defendant or the state may apply for an order for conditional examination by deposition. The order for conditional examination shall not be entered by the court without five (5) days' notice to opposing counsel. If the court

is satisfied that the examination of the witness is necessary, it shall order that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the opposing counsel within a specified time before that fixed for the examination. The order shall direct that the examination be taken before a judge named therein and that the defendant be ordered to appear in person or by counsel, or execute a waiver of the right to confront said witness; and on proof being furnished to such judge of service upon the opposing counsel of a copy of the order, whether or not opposing counsel appear, the examination shall proceed. Attendance of the witness may be enforced by subpoena issued by the judge before whom the examination is to be taken, or from the court where the trial is to be had. The testimony given by the witness must be taken before a certified court reporter. The deposition or certified copy thereof may be read in evidence by either party at the trial, should the witness be unable to attend by reason of his death, insanity, sickness, infirmity, or continued absence from the state. Upon reading the depositions in evidence, the same objections may be renewed which were previously made to a question or answer contained therein as if the witness had been examined orally in court. Provided however, the state shall not be able to utilize the deposition taken unless the defendant was present, in person or by counsel, and had the opportunity to cross examine the witness or has executed a waiver of the right to confront the witness, or as otherwise admissible as authorized by law.

SECTION 9. 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:

Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting, however, any item which was obtained from the defendant by the state of which copies are requested by the defendant shall be paid by the state. Provided, if the court determines the defendant is indigent and without funds to pay the cost of reproduction of the required

items, the cost shall be paid by the Indigent Defender System, unless otherwise provided by law. Any monies collected pursuant to this section by a district attorney's office shall be deposited in the District Attorneys Evidence Fund.

SECTION 10. AMENDATORY 22 O.S. 1991, Section 513, is amended to read as follows:

Section 513. There are ~~four~~ five kinds of pleas to an indictment or information. A plea of:

First, Guilty.

Second, Not guilty.

Third, Nolo contendere, subject to the approval of the court. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

Fourth, A former judgment of conviction or acquittal of the offense charged, which must be specially pleaded, either with or without the plea of not guilty.

Fifth, A conditional plea. With the approval of the court and the consent of the state, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

SECTION 11. This act shall become effective September 1, 1993.

44-1-7263

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