

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 666

By: Smith

COMMITTEE SUBSTITUTE

(Criminal procedure - creating the Oklahoma Criminal
Discovery Code - amending 22 O.S. 1991, Sections 258,
259 and 1176 - codification -

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 and 2 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:

A. Disclosure of Evidence by the State.

1. Information Subject to Disclosure.

a. Statement of Defendant. Upon request of a defendant
the state shall disclose to the defendant and make
available for inspection, copying or photographing:
any relevant written or recorded statements made by
the defendant, or copies thereof, within the
possession, custody or control of the state, the
existence of which is known, or by the exercise of
due diligence may become known, to the attorney for
the state; that portion of any written record
containing the substance of any relevant oral

statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be an agent of the state; and recorded testimony of the defendant before a grand jury which relates to the offense charged. The state shall also disclose to the defendant the substance of any other relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known by the defendant to be an agent of the state if the state intends to use that statement at trial. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon motion by the defendant, discovery of relevant recorded testimony of any witness before a grand jury who:

- (1) was, at the time of that testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or
- (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which the witness was involved.

- b. Defendant's Prior Record. Upon request of the defendant, the state shall furnish to the defendant such copy of the defendant's prior criminal record, if any, as is within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state.
- c. Documents and Tangible Objects. Upon request of the defendant the state shall provide to the defendant a list of witnesses which the state intends to call at

trial and shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

- d. Reports of Examinations and Tests. Upon request of a defendant the state shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

2. Information Not Subject to Disclosure. Except as provided in subparagraphs a, b, and c of paragraph 1 of subsection A of this section, this code does not authorize the discovery or inspection of reports, memoranda or other internal state documents made by the attorney for the state or other state agents in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses.

3. Grand Jury Transcripts. Except as provided in subparagraph a of paragraph 1 of subsection A of this section, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

B. Disclosure of Evidence by the Defendant.

1. Information Subject to Disclosure.

- a. Documents and Tangible Objects. If the defendant requests disclosure under subparagraph c or d of paragraph 1 of subsection A of this section, upon compliance with such request by the state, the defendant, on request of the state, shall provide to the state a list of witnesses which the defendant intends to call at trial and shall permit the state to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.
- b. Reports of Examinations and Tests. If the defendant requests disclosure under subparagraph c or d of paragraph 1 of subsection A of this section, upon compliance with such request by the state, the defendant, on request of the state, shall permit the state to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief 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 that witness' testimony.

2. Information Not Subject to Disclosure. Except as to scientific or medical reports, this subsection does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by state or defense witnesses, or by prospective

state or defense witnesses, to the defendant, the agents or attorneys of the defendant.

C. Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this code, such party shall promptly notify the other party or that other party's attorney or the court of the existence of the additional evidence or material.

D. Regulation of Discovery.

1. Protective and Modifying Orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement 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.

2. Failure to Comply With a Request. 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 this code, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

E. Alibi Witnesses. Discovery of alibi witnesses.

1. Notice by Defendant. Upon written demand of the attorney for the state stating the time, date and place at which the alleged offense was committed, the defendant shall serve within ten (10) days, or at such different time as the court may direct, upon the attorney for the state a written notice of the defendant's intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which

the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi.

2. Disclosure of Information and Witness. Within ten (10) days after notice of intention to offer a defense of alibi is served upon the attorney for the state, but in no event less than ten (10) days before trial unless the court otherwise directs, the attorney for the state shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

3. Continuing Duty to Disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under paragraph 1 or 2 of this subsection, the party shall promptly notify the other party or the other party's attorney of the existence and identity of such additional witness.

4. Failure to Comply. Upon the failure of either party to comply with the requirements of this code, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from, or presence at, the scene of the alleged offense. This code shall not limit the right of the defendant to testify.

5. Exceptions. For good cause shown, the court may grant an exception to any of the requirements of paragraphs 1 through 4 of this subsection.

6. Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

F. Notice of Insanity Defense or Expert Testimony of Defendant's Mental Condition.

1. Defense of Insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged offense, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the state in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this paragraph, insanity may not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

2. Expert Testimony of Defendant's Mental Condition. If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of guilt, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the state in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

3. Mental Examination of Defendant. In an appropriate case the court may, upon motion of the attorney for the state, order the defendant to submit to an examination pursuant to Section 1175.1 et seq. of Title 22 of the Oklahoma Statutes. No statement made by the defendant in the course of any examination provided for by this rule, whether the examination be with or without the consent of the defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony.

4. Failure to Comply. If there is a failure to give notice when required by paragraph 2 of this subsection or to submit to an examination when ordered under paragraph 3 of this subsection, the

court may exclude the testimony of any expert witness offered by the defendant on the issue of the defendant's guilt.

5. Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under paragraph 1 or 2 of this subsection, later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

G. Time of Discovery. Motions for discovery may be made at the time of the arraignment or thereafter. The court may set a time for requests for discovery under this code.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 258, is amended to read as follows:

Section 258. First: 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: 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: A preliminary magistrate shall have the authority to limit the evidence presented at the preliminary hearing to that which is relevant to the issues of:

1. Whether the crime was committed; and
2. Whether there is probable cause to believe the defendant committed the crime. Once a showing of probable cause is made, the magistrate may terminate the preliminary hearing.

Seventh: The purpose of the preliminary hearing is to establish probable cause that a crime was committed and probable cause that the defendant committed the crime. It is not the purpose of the preliminary hearing to provide a means of pretrial discovery.

SECTION 4. 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 upon proper offer of proof made by the defendant and if such offer of proof shows that additional testimony is relevant to the issues of a preliminary examination. Provided, however, at any time proof is presented to establish a felony offense has been committed, and that probable cause exists

to believe the defendant committed such offenses, the magistrate may halt the proceedings and enter a bind-over order.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 258.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

Preliminary Examination.

1. Probable Cause Finding. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the court shall forthwith hold the defendant to answer in district court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination.

2. Discharge of Defendant. If from the evidence it appears there is no probable cause to believe that an offense has been committed or that the defendant committed it, the court shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

3. Records. After concluding the proceeding the court shall transmit forthwith to the clerk of the district court all papers in the proceeding. The court shall promptly make or cause to be made a record or summary of such proceeding.

a. On timely application to the judge, the attorney in a criminal case may be given the opportunity to have the recording of the hearing on preliminary examination made available to that attorney in connection with any further hearing or preparation for trial. The court may appoint the place for and define the conditions under which such opportunity may be afforded counsel.

b. On application of a defendant addressed to the court or any judge thereof, an order may issue that the court make available a copy of the transcript, or a

portion thereof, to defense counsel. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that the defendant is unable to pay or to give security therefor, in which case the expense shall be paid from available court funds. Counsel for the state may move also that a copy of the transcript, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the state need not prepay costs nor furnish security therefor.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1176, is amended to read as follows:

Section 1176. A. ~~If the defendant intends to raise the question of mental illness or insanity at the time of the offense, the defendant shall file an application with the court at least twenty (20) days before trial. The procedure to be followed for review of such an application will be the same as provided in Section 1175.3 of Title 22 of the Oklahoma Statutes.~~

~~B.~~ If the court finds that the defendant's sanity at the time of the offense is to be a significant factor in his defense at trial and that the defendant is financially unable to obtain the services of a qualified mental health professional, the Oklahoma Indigent Defense System Board, or in counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, the court shall provide the defendant with access to a qualified mental health professional by authorizing counsel to obtain the services of a qualified mental health professional to conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense. Compensation for such services shall be paid by the Indigent Defense System Board, except that in counties subject to the provisions of Section 138.1 of Title 19 of the Oklahoma Statutes, the compensation shall be paid by the court fund.

~~C.~~ B. As used in this section "qualified mental health professional" means an individual certified or licensed in this state to practice psychiatry, psychology, professional counseling, or social work.

SECTION 7. This act shall become effective January 1, 1995.

44-2-2215

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