

SHORT TITLE: Criminal procedure; creating the Oklahoma Criminal
Discovery Code; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 117

By: Wright

AS INTRODUCED

An Act relating to criminal procedure; creating the Oklahoma Criminal Discovery Code; providing citation; specifying rights of discovery for defendant and state; providing sanctions for noncompliance; providing for deposition of certain witnesses; providing for payment of certain costs; 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 to protect all 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 reasonable test performed; and
6. "Defendant" means the defendant or the 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 the initial appearance in either a misdemeanor case or delinquency proceeding in a juvenile case, or in a felony case upon the entry of the bindover order, the district court is empowered to act upon any pretrial motions, including requests for discovery. Although the assigned district court judge may issue a discovery order at any stage of the proceeding following the bindover order, the most appropriate time shall be 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 ten (10) days prior to trial. Provided however, after initial appearance and before preliminary hearing the

defendant shall have the right to examine and review all statements and reports, including reports from the Oklahoma State Bureau of Investigation, in the possession of the prosecuting attorney, and if desired, 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 recorded statement, if such exist, or if not, summaries of the same,
- 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 such 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. any Oklahoma State Bureau of Investigation or Federal Bureau of Investigation reports of arrest and prosecution (RAP) sheets or records check on any witness listed by the state or the defense as a possible witness who will testify at trial;

2. The prosecuting attorney shall disclose to the defense counsel any material or information within the prosecutor's possession or control which tends to negate the guilt of the accused as to 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 others 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 code, as follows:

- a. the names and addresses of witnesses, whom the defendant intends to call at trial, together with their relevant oral, written and recorded statement, if such exist, or if not, summaries of the same,
- b. the names and addresses of any witnesses the defendant will call, other than himself, for 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 subparagraph a or b of this paragraph is not admissible in evidence at trial except to refute the testimony of a witness whose identity is required to be disclosed; and

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, or
- 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, and
- c. if the defense subsequently ascertains that the defense has possession or control of such a matter, the defendant shall promptly inform the prosecuting attorney. The fact that the defendant, under subparagraph a of this paragraph, 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 paragraph 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:

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:

- a. requiring the prosecuting attorney to comply,
- b. granting the defendant additional time or a continuance,
- c. relieving the defendant from making a disclosure required by the court pursuant to this code,
- d. prohibiting the prosecuting attorney from introducing specified evidence or calling specified witnesses, or
- e. dismissing charges;

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:

- a. requiring the defendant to comply,
- b. granting the prosecuting attorney additional time or a continuance,
- c. prohibiting the defendant from introducing specified evidence or calling specified witnesses, and
- d. granting a mistrial based on manifest necessity due to the acts of the defendant;

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

4. 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 2008 of Title 22, unless there is created a duplication in numbering, reads as follows:

When the state endorses additional witnesses after the preliminary hearing, or if a subpoenaed witness fails to appear at the preliminary hearing in a criminal case, the defendant or the state may apply for an order for conditional examination by deposition. The application shall be made after a five-day notice to opposing counsel. If the court is satisfied that the examination of the witness is necessary, it must 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 time fixed for the examination. The order shall direct that the examination shall be taken before a judge, who shall be named in the order; 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 appears, 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. A 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 a deposition 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 a deposition taken unless the defendant was present and had the opportunity to cross-examine 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 2009 of Title 22, unless there is created a duplication in numbering, reads as follows:

Reasonable costs for copying, duplicating, videotaping, developing or any other cost associated for items requested as provided by this code 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 copying, duplicating or reproducing any of the required items, the cost shall be paid by the Indigent Defense System, unless otherwise provided by law.

SECTION 10. This act shall become effective September 1, 1993.

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