

SHORT TITLE: Criminal procedure; creating the Oklahoma Criminal Discovery Code; limiting certain evidence at preliminary hearing; codification; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 666

By: Smith

AS INTRODUCED

An Act relating to criminal procedure; creating the Oklahoma Criminal Discovery Code; providing short title and scope of code; providing for construction of code; 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; amending 22 O.S. 1991, Sections 258 and 259, which relate to preliminary examination and order of witnesses; limiting certain evidence at preliminary hearing; limiting defendant's ability to call witnesses at preliminary hearing; authorizing bind-over order; allowing certain evidence in preliminary hearing; providing procedure for preliminary examination; 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 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 a state agent; 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 a state agent 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 its motion, 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 government, 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 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 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 defendant's agents or attorneys.

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 thereafter, 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. Discovery Date. The court may, at the time of the arraignment or as soon as practicable, set a time for requests of 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.

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. This act shall become effective January 1, 1995.

44-2-1546

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