

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2617

By: Paulk of the House

and

Brown of the Senate

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; amending 21 O.S. 1991, Sections 583 and 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992 (21 O.S. Supp. 1995, Section 701.10), which relate to disclosure of grand jury proceedings and sentencing proceeding for murder in the first degree; making disclosures by a witness a misdemeanor; providing exception; providing for cessation of prohibition; providing for sentencing proceeding if no bill of particulars has been filed; providing for presentation of certain evidence; amending 22 O.S. 1991, Section 355, which relates to disclosure of multicounty grand jury proceedings; deleting provision regarding disclosure of testimony; amending 51 O.S. 1991, Section 94, which relates to ouster of certain officers; increasing the number of citizens required to verify notice to the Attorney General to instigate investigation and

ouster proceedings; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1991, Section 583, is amended to read as follows:

Section 583. Every grand juror, district attorney, witness, clerk, judge or other officer who, except when required by a court, willfully discloses any evidence adduced before the grand jury or anything which ~~he himself~~ such person or any member of the grand jury may have said, or in what manner any grand juror may have voted on a matter before ~~him~~ the grand jury, is guilty of a misdemeanor. In no event may a witness be prevented from disclosing the testimony of the witness to the attorney of the witness. The prohibition against the witness disclosing the testimony shall cease upon issuance of the final report of the grand jury.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992 (21 O.S. Supp. 1995, Section 701.10), is amended to read as follows:

Section 701.10 A. Upon conviction or adjudication of guilt of a defendant of murder in the first degree, ~~the~~ the:

1. If a bill of particulars has been filed, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life imprisonment without parole or life imprisonment; and

2. If no bill of particulars has been filed prior to the commencement of trial, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to life imprisonment without parole or life imprisonment.

The proceeding shall be conducted by the trial judge before the same trial jury as soon as practicable without presentence investigation.

B. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court.

C. In the sentencing proceeding, whether or not a bill of particulars has been filed prior to the commencement of trial, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in ~~Section~~ Sections 701.7 et seq. through 701.12 of this title. Only such evidence in aggravation as the state has made known to the defendant prior to ~~his~~ the trial shall be admissible. In addition, the state may introduce evidence about the victim and about the impact of the murder on the family of the victim.

D. This section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or ~~his~~ counsel for the defendant shall be permitted to present argument for or against sentence of death.

E. Only sentencing proceedings occurring after the effective date of this section shall be subject to the provisions of this section.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 355, is amended to read as follows:

Section 355. A. Disclosure of matters occurring before the multicounty grand jury other than its deliberations and the vote of any juror may be used by the Attorney General in the performance of his duties. The Attorney General may disclose so much of the multicounty grand jury's proceedings to law enforcement agencies as he considers essential to the public interest and effective law enforcement. Otherwise, a grand juror, attorney, interpreter, stenographer, operator of any recording device, or any typist who

transcribes recorded testimony may disclose matters occurring before the multicounty grand jury only when so directed by the court. All such persons shall be sworn to secrecy and shall be in contempt of court if they reveal any information which they are sworn to keep secret.

B. 1. A witness subpoenaed to appear and testify before a multicounty grand jury or to produce documents, records, or other evidence shall be entitled to the assistance of counsel, including assistance during such time as the witness is questioned in the presence of the multicounty grand jury.

2. If counsel desired by the witness is not available, the witness shall obtain other counsel within a reasonable time in order that the multicounty grand jury may proceed with its investigation.

3. Such counsel may be retained by the witness or shall be appointed in the case of any person unable to procure sufficient funds to obtain legal representation.

4. Such counsel shall be allowed to be present in the grand jury room during the questioning of the witness and shall be allowed to advise the witness but shall make no objections or arguments or otherwise address the multicounty grand jury or its legal advisor. The presiding judge shall have the same power to remove such counsel from the grand jury room as a judge has with respect to an attorney in any court proceeding. Violation of this subsection shall be punishable as contempt.

~~C. No witness shall be prohibited from disclosing his testimony before the multicounty grand jury except for cause shown in a hearing before the presiding judge. In no event may a witness be prevented from disclosing his testimony to his attorney.~~

SECTION 4. AMENDATORY 51 O.S. 1991, Section 94, is amended to read as follows:

Section 94. It shall be the duty of the Attorney General of this state, when directed by the Governor, or upon notice being

received by ~~him~~ the Attorney General in writing and verified by ~~five~~
one hundred or more reputable citizens of the county before some
officer authorized to administer oaths, that any officer herein
mentioned has been guilty of any of the acts, omissions or offenses
as set out in Section, ~~3~~ 93 of this ~~act~~ title, to forthwith
investigate such complaint, and if on such investigation ~~he~~ the
Attorney General shall find that there is reasonable cause for such
complaint, ~~he~~ the Attorney General shall forthwith institute
proceedings in the Supreme Court of the state, or any district court
of the county of the residence of the accused, to oust such officer
from office.

SECTION 5. This act shall become effective November 1, 1996.

45-2-2685

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