

ENROLLED HOUSE
BILL NO. 2387

By: Paulk of the House

and

Helton of the Senate

An Act relating to criminal procedure; amending Section 2, Chapter 292, O.S.L. 1994, as amended by Section 4, Chapter 304, O.S.L. 1996 (22 O.S. Supp. 1997, Section 2002), which relates to disclosure of evidence; modifying types of records required to be made available regarding certain witnesses; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 292, O.S.L. 1994, as amended by Section 4, Chapter 304, O.S.L. 1996 (22 O.S. Supp. 1997, Section 2002), is amended to read as follows:

Section 2002. A. Disclosure of Evidence by the State.

1. Upon request of the defense, the state shall be required to disclose the following:
 - a. the names and addresses of witnesses which the state intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,
 - b. law enforcement reports made in connection with the particular case,
 - c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant,
 - d. 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,
 - e. 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,
 - f. any record of prior criminal convictions of the defendant, or of any codefendant, and
 - g. Oklahoma State Bureau of Investigation (OSBI) rap sheet/records check on any witness listed by the state or the defense as a witness who will testify at trial, as well as any convictions of any witness revealed through additional record checks if the defense has furnished social security numbers or date of birth for their witnesses, except OSBI rap sheet/record checks shall not be provided on the arresting law enforcement officer listed as a witness unless specifically requested by the defense provide date of birth, social security number, home phone number or address.

2. The state shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment.

3. The prosecuting attorney's obligations under this standard extend to:

- a. material and information in the possession or control of members of the prosecutor's staff,
- b. any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and
- c. any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know.

B. Disclosure of Evidence by the Defendant.

1. Upon request of the state, the defense shall be required to disclose the following:

- a. the names and addresses of witnesses which the defense intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,
- b. the name and address of any witness, other than the defendant, who will be called to show that the defendant was not present at the time and place specified in the information or indictment, together with the witness' statement to that fact,
- c. the names and addresses of any witness 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.

2. A statement filed under subparagraph a, b or c of paragraph 1 of subsection A or B of this section is not admissible in evidence at trial. Information obtained as a result of a statement filed under subsection A or B of this section is not admissible in evidence at trial except to refute the testimony of a witness whose identity subsection A of this section requires to be disclosed.

3. Upon the prosecuting attorney's request after the time set by the court, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon 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.

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 the Oklahoma Criminal

Discovery Code, such party shall promptly notify the other party, the attorney of the other party, or the court of the existence of the additional evidence or material.

D. Time of Discovery.

Motions for discovery may be made at the time of the district court arraignment or thereafter; provided that requests for police reports may be made subject to the provisions of Section 258 of this title. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

E. Regulation of Discovery.

1. Protective and Modifying Orders. Upon motion of the state or defendant, the court may at any time order that specified disclosures be restricted, or make any other protective order. If the court enters an order restricting specified disclosures, the entire text of the material restricted 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 rule, the court may order such party to permit the discovery or inspection, grant continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. 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.

F. 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.

SECTION 2. This act shall become effective November 1, 1998.

Passed the House of Representatives the 22nd day of April, 1998.

Speaker of the House of Representatives

Passed the Senate the 13th day of April, 1998.

President of the Senate

