

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 838

By: Corn

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 258, as last amended by Section 1, Chapter 337, O.S.L. 2003 (22 O.S. Supp. 2004, Section 258), which relates to preliminary examinations; prohibiting issuance of subpoena to certain persons under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 258, as last amended by Section 1, Chapter 337, O.S.L. 2003 (22 O.S. Supp. 2004, 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 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, except that a subpoena shall not be issued for a physician

from the Office of the State Medical Examiner if the physician has provided a report related to the case to the district attorney.

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 shall terminate the preliminary hearing and enter a bindover order; provided, however, that the preliminary

hearing shall be terminated only if the state made available for inspection law enforcement reports within the prosecuting attorney's knowledge or possession at the time to the defendant five (5) working days prior to the date of the preliminary hearing. The district attorney shall determine whether or not to make law enforcement reports available prior to the preliminary hearing. If reports are made available, the district attorney shall be required to provide those law enforcement reports that the district attorney knows to exist at the time of providing the reports, but this does not include any physical evidence which may exist in the case. This provision does not require the district attorney to provide copies for the defendant, but only to make them available for inspection by defense counsel. In the alternative, upon agreement of the state and the defendant, the court may terminate the preliminary hearing once a showing of probable cause is made.

Seventh: A preliminary magistrate shall accept into evidence as proof of prior convictions a noncertified copy of a Judgment and Sentence when the copy appears to the preliminary magistrate to be patently accurate. The district attorney shall make a noncertified copy of the Judgment and Sentence available to the defendant no fewer than five (5) days prior to the hearing. If such copy is not made available five (5) days prior to the hearing, the court shall continue the portion of the hearing to which the copy is relevant for such time as the defendant requests, not to exceed five (5) days subsequent to the receipt of the copy.

Eighth: 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.

SECTION 2. This act shall become effective November 1, 2005.