

THE HOUSE OF REPRESENTATIVES  
Monday, February 9, 2009

Committee Substitute for  
House Bill No. 2266

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2266 - By: CHRISTIAN AND SULLIVAN of the House.

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 2002, as amended by Section 23, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2008, Section 2002), which relates to the Oklahoma Criminal Discovery Code; providing exception to certain disclosure requirement; and providing an effective date.

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

- 1           SECTION 1.   AMENDATORY   22 O.S. 2001, Section 2002, as amended by  
2 Section 23, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2008, Section 2002), is amended to  
3 read as follows:
- 4           Section 2002. A. Disclosure of Evidence by the State.
- 5           1. Upon request of the defense, the state shall be required to disclose the following:
- 6               a.     the names and addresses of witnesses which the state intends to call at  
7                     trial, together with their relevant, written or recorded statement, if  
8                     any, or if none, significant summaries of any oral statement,
- 9               b.     law enforcement reports made in connection with the particular case,
- 10              c.     any written or recorded statements and the substance of any oral  
11                     statements made by the accused or made by a codefendant,

- 1 d. any reports or statements made by experts in connection with the  
2 particular case, including results of physical or mental examinations  
3 and of scientific tests, experiments, or comparisons,  
4 e. any books, papers, documents, photographs, tangible objects, buildings  
5 or places which the prosecuting attorney intends to use in the hearing  
6 or trial or which were obtained from or belong to the accused,  
7 f. any record of prior criminal convictions of the defendant, or of any  
8 codefendant, and  
9 g. Oklahoma State Bureau of Investigation (OSBI) rap sheet/records  
10 check on any witness listed by the state or the defense as a witness  
11 who will testify at trial, as well as any convictions of any witness  
12 revealed through additional record checks if the defense has furnished  
13 social security numbers or date of birth for their witnesses, except  
14 OSBI rap sheet/record checks shall not provide date of birth, social  
15 security number, home phone number or address. The state shall not  
16 be required to provide an OSBI rap sheet, home address, home  
17 telephone number, date of birth or social security number of any  
18 witness that is currently certified as a law enforcement officer by the  
19 Council on Law Enforcement Education and Training.

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

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

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

9 B. Disclosure of Evidence by the Defendant.

- 10 1. Upon request of the state, the defense shall be required to disclose the following:  
11 a. the names and addresses of witnesses which the defense intends to call  
12 at trial, together with their relevant, written or recorded statement, if  
13 any, or if none, significant summaries of any oral statement,  
14 b. the name and address of any witness, other than the defendant, who  
15 will be called to show that the defendant was not present at the time  
16 and place specified in the information or indictment, together with the  
17 witness' statement to that fact,  
18 c. the names and addresses of any witness the defendant will call, other  
19 than himself, for testimony relating to any mental disease, mental  
20 defect, or other condition bearing upon his mental state at the time the  
21 offense was allegedly committed, together with the witness' statement

1 of that fact, if the statement is redacted by the court to preclude  
2 disclosure of privileged communication.

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

8 3. Upon the prosecuting attorney's request after the time set by the court, the  
9 defendant shall allow him access at any reasonable times and in any reasonable manner  
10 to inspect, photograph, copy, or have reasonable tests made upon any book, paper,  
11 document, photograph, or tangible object which is within the defendant's possession or  
12 control and which:

- 13 a. the defendant intends to offer in evidence, except to the extent that it  
14 contains any communication of the defendant, or  
15 b. is a report or statement as to a physical or mental examination or  
16 scientific test or experiment made in connection with the particular  
17 case prepared by and relating to the anticipated testimony of a person  
18 whom the defendant intends to call as a witness, provided the report or  
19 statement is redacted by the court to preclude disclosure of privileged  
20 communication.

21 C. Continuing Duty to Disclose.

1 If, prior to or during trial, a party discovers additional evidence or material  
2 previously requested or ordered, which is subject to discovery or inspection under the  
3 Oklahoma Criminal Discovery Code, such party shall promptly notify the other party,  
4 the attorney of the other party, or the court of the existence of the additional evidence or  
5 material.

6 D. Time of Discovery.

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

14 E. Regulation of Discovery.

15 1. Protective and Modifying Orders. Upon motion of the state or defendant, the  
16 court may at any time order that specified disclosures be restricted, or make any other  
17 protective order. If the court enters an order restricting specified disclosures, the entire  
18 text of the material restricted shall be sealed and preserved in the records of the court to  
19 be made available to the appellate court in the event of an appeal.

20 2. Failure to Comply with a Request. If at any time during the course of the  
21 proceedings it is brought to the attention of the court that a party has failed to comply  
22 with this rule, the court may order such party to permit the discovery or inspection,

1 grant continuance, or prohibit the party from introducing evidence not disclosed, or it  
2 may enter such other order as it deems just under the circumstances.

3 3. The discovery order shall not include discovery of legal work product of either  
4 attorney which is deemed to include legal research or those portions of records,  
5 correspondence, reports, or memoranda which are only the opinions, theories, or  
6 conclusions of the attorney or the attorney's legal staff.

7 F. Reasonable cost of copying, duplicating, videotaping, developing or any other  
8 cost associated with this Code for items requested shall be paid by the party so  
9 requesting; however, any item which was obtained from the defendant by the state of  
10 which copies are requested by the defendant shall be paid by the state. Provided, if the  
11 court determines the defendant is indigent and without funds to pay the cost of  
12 reproduction of the required items, the cost shall be paid by the Indigent Defender  
13 System, unless otherwise provided by law.

14 SECTION 2. This act shall become effective November 1, 2009.

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-05-09 - DO PASS,  
16 As Amended and Coauthored.