

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 873

By: Sykes

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5
6 AS INTRODUCED

7 An Act relating to discovery procedure; amending 22
8 O.S. 2001, Section 2002, as amended by Section 23,
9 Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2010, Section
10 2002), which relates to disclosure of evidence;
11 clarifying language; establishing exception to
12 disclosure of certain information; making gender
13 neutral; and providing an effective date.

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

15 SECTION 1. AMENDATORY 22 O.S. 2001, Section 2002, as
16 amended by Section 23, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2010,
17 Section 2002), is amended to read as follows:

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

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

- 21 a. the names and addresses of witnesses which the state
22 intends to call at trial, together with their
23 relevant, written or recorded statement, if any, or if
24 none, significant summaries of any oral statement,

- 1 b. law enforcement reports made in connection with the
2 particular case,
- 3 c. any written or recorded statements and the substance
4 of any oral statements made by the accused or made by
5 a codefendant,
- 6 d. any reports or statements made by experts in
7 connection with the particular case, including results
8 of physical or mental examinations and of scientific
9 tests, experiments, or comparisons,
- 10 e. any books, papers, documents, photographs, tangible
11 objects, buildings or places which the prosecuting
12 attorney intends to use in the hearing or trial or
13 which were obtained from or belong to the accused,
- 14 f. any record of prior criminal convictions of the
15 defendant, or of any codefendant, and
- 16 g. Oklahoma State Bureau of Investigation (OSBI) ~~rap~~
17 ~~sheet/records~~ arrest and conviction records check on
18 any witness listed by the state or the defense as a
19 witness who will testify at trial, as well as any
20 convictions of any witness revealed through additional
21 record checks if the defense has furnished social
22 security numbers or date of birth for their witnesses,
23 except OSBI ~~rap-sheet/record~~ arrest and conviction
24 records checks shall not provide date of birth, social

1 security number, home phone number or address.
2 Provided, however, the state shall not be required to
3 provide OSBI arrest and conviction records, a home
4 address, home telephone number, date of birth or
5 social security number of any witness that is
6 currently certified as a law enforcement officer by
7 the Council on Law Enforcement Education and Training.

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

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

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

22 B. Disclosure of Evidence by the Defendant.

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

- 1 a. the names and addresses of witnesses which the defense
2 intends to call at trial, together with their
3 relevant, written or recorded statement, if any, or if
4 none, significant summaries of any oral statement,
- 5 b. the name and address of any witness, other than the
6 defendant, who will be called to show that the
7 defendant was not present at the time and place
8 specified in the information or indictment, together
9 with the witness' statement to that fact,
- 10 c. the names and addresses of any witness the defendant
11 will call, other than himself or herself, for
12 testimony relating to any mental disease, mental
13 defect, or other condition bearing upon his or her
14 mental state at the time the offense was allegedly
15 committed, together with the witness' statement of
16 that fact, if the statement is redacted by the court
17 to preclude disclosure of privileged communication.

18 2. A statement filed under subparagraph a, b or c of paragraph
19 1 of subsection A or B of this section is not admissible in evidence
20 at trial. Information obtained as a result of a statement filed
21 under subsection A or B of this section is not admissible in
22 evidence at trial except to refute the testimony of a witness whose
23 identity subsection A of this section requires to be disclosed.

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

7 a. the defendant intends to offer in evidence, except to
8 the extent that it contains any communication of the
9 defendant, or

10 b. is a report or statement as to a physical or mental
11 examination or scientific test or experiment made in
12 connection with the particular case prepared by and
13 relating to the anticipated testimony of a person whom
14 the defendant intends to call as a witness, provided
15 the report or statement is redacted by the court to
16 preclude disclosure of privileged communication.

17 C. Continuing Duty to Disclose.

18 If, prior to or during trial, a party discovers additional
19 evidence or material previously requested or ordered, which is
20 subject to discovery or inspection under the Oklahoma Criminal
21 Discovery Code, such party shall promptly notify the other party,
22 the attorney of the other party, or the court of the existence of
23 the additional evidence or material.

24 D. Time of Discovery.

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

10 E. Regulation of Discovery.

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

18 2. Failure to Comply with a Request. If at any time during the
19 course of the proceedings it is brought to the attention of the
20 court that a party has failed to comply with this rule, the court
21 may order such party to permit the discovery or inspection, grant
22 continuance, or prohibit the party from introducing evidence not
23 disclosed, or it may enter such other order as it deems just under
24 the circumstances.

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

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

15 SECTION 2. This act shall become effective November 1, 2011.

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