

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1634

By: Brooks

AS INTRODUCED

An Act relating to informant testimony; amending 12 O.S. 2011, Section 2510, which relates to identity of informant; conforming language; establishing exception to certain privilege; amending 22 O.S. 2011, Section 2002, which relates to discovery disclosures; requiring the state to make certain disclosures; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 2510, is amended to read as follows:

Section 2510. A. The United States, state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting the investigation.

B. The privilege under this section may be claimed by an appropriate representative of the public entity to which the information was furnished.

1 C. The following shall be exceptions to the privilege granted
2 in this section:

3 1. No privilege exists if the identity of the ~~informer~~
4 informant or the ~~informer's~~ informant's interest in the subject
5 matter of the ~~informer's~~ informant's communication has been
6 disclosed to those who would have cause to resent the communication
7 by a holder of the privilege or by the ~~informer's~~ informant's own
8 action, ~~or~~ if the ~~informer~~ informant appears as a witness for the
9 government, or if information regarding the informant is required to
10 be disclosed pursuant to paragraph 4 of subsection A of Section 2002
11 of Title 22 of the Oklahoma Statutes.

12 2. If the informant is also a material witness to the criminal
13 conduct with which the defendant is charged, or was a participant in
14 said criminal conduct conjointly with the defendant, or is shown to
15 be able to give testimony relevant to a material issue in the case.

16 3. If information from an ~~informer~~ informant is relied upon to
17 establish the legality of the means by which evidence was obtained
18 and the court or the defendant is not satisfied that the information
19 was received from an ~~informer~~ informant reasonably believed to be
20 reliable or credible, the court or defendant may require the
21 identity of the ~~informer~~ informant to be disclosed. The court
22 shall, on request of the government, direct that the disclosure be
23 made in chambers. All counsel and parties concerned with the issue
24 of legality shall be permitted to be present at every stage of a

1 proceeding under this subsection except a disclosure in chambers if
2 the court determines that no counsel or party shall be permitted to
3 be present. If disclosure of the identity of the ~~informer~~ informant
4 is made in chambers, the record thereof shall be sealed and
5 preserved to be made available to the appellate court in the event
6 of an appeal, and the contents shall not otherwise be revealed
7 without consent of the government.

8 SECTION 2. AMENDATORY 22 O.S. 2011, Section 2002, is
9 amended to read as follows:

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

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

- 13 a. the names and addresses of witnesses which the state
14 intends to call at trial, together with their
15 relevant, written or recorded statement, if any, or if
16 none, significant summaries of any oral statement,
- 17 b. law enforcement reports made in connection with the
18 particular case,
- 19 c. any written or recorded statements and the substance
20 of any oral statements made by the accused or made by
21 a codefendant,
- 22 d. any reports or statements made by experts in
23 connection with the particular case, including results
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- 1 of physical or mental examinations and of scientific
2 tests, experiments, or comparisons,
3 e. any books, papers, documents, photographs, tangible
4 objects, buildings or places which the prosecuting
5 attorney intends to use in the hearing or trial or
6 which were obtained from or belong to the accused,
7 f. any record of prior criminal convictions of the
8 defendant, or of any codefendant, and
9 g. Oklahoma State Bureau of Investigation (OSBI) rap
10 sheet/records check on any witness listed by the state
11 or the defense as a witness who will testify at trial,
12 as well as any convictions of any witness revealed
13 through additional record checks if the defense has
14 furnished social security numbers or date of birth for
15 their witnesses, except OSBI rap sheet/record checks
16 shall not provide date of birth, social security
17 number, home phone number or address.

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

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

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

8 4. At least ten (10) days before preliminary hearing, the state
9 shall disclose in discovery:

- 10 a. the complete criminal history of any informant who may
11 be called to offer testimony or to provide evidence
12 against the defendant,
13 b. any deal, promise, inducement or benefit that the
14 offering party has made or may make in the future to
15 the informant,
16 c. the specific statements made by the defendant and the
17 time, place and manner of their disclosure,
18 d. all other cases in which the informant testified or
19 offered statements against an individual but was not
20 called, whether the statements were admitted in the
21 case, and whether the informant received any deal,
22 promise, inducement or benefit in exchange for or
23 subsequent to that testimony or statement,
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- 1 e. whether at any time the informant recanted that
2 testimony or statement and, if so, a transcript or
3 copy of such recantation, and
4 f. any other information relevant to the informant's
5 credibility.

6 B. Disclosure of Evidence by the Defendant.

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

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

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

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

15 a. the defendant intends to offer in evidence, except to
16 the extent that it contains any communication of the
17 defendant, or

18 b. is a report or statement as to a physical or mental
19 examination or scientific test or experiment made in
20 connection with the particular case prepared by and
21 relating to the anticipated testimony of a person whom
22 the defendant intends to call as a witness, provided
23 the report or statement is redacted by the court to
24 preclude disclosure of privileged communication.

1 C. Continuing Duty to Disclose.

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

8 D. Time of Discovery.

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

18 E. Regulation of Discovery.

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

3 2. Failure to Comply with a Request. If at any time during the
4 course of the proceedings it is brought to the attention of the
5 court that a party has failed to comply with this rule, the court
6 may order such party to permit the discovery or inspection, grant
7 continuance, or prohibit the party from introducing evidence not
8 disclosed, or it may enter such other order as it deems just under
9 the circumstances.

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

15 F. Reasonable cost of copying, duplicating, videotaping,
16 developing or any other cost associated with this Code for items
17 requested shall be paid by the party so requesting; however, any
18 item which was obtained from the defendant by the state of which
19 copies are requested by the defendant shall be paid by the state.
20 Provided, if the court determines the defendant is indigent and
21 without funds to pay the cost of reproduction of the required items,
22 the cost shall be paid by the Indigent Defender System, unless
23 otherwise provided by law.
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SECTION 3. This act shall become effective November 1, 2020.

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