

# An Act

ENROLLED HOUSE  
BILL NO. 3648

By: Dills of the House

and

Weaver of the Senate

An Act relating to criminal procedure; creating Mackenzie's Law; amending 22 O.S. 2021, Section 258, which relates to preliminary examinations and proceedings; establishing time limitation for conducting preliminary hearings; requiring show cause hearing under certain circumstances; requiring scheduling for preliminary hearing based on certain finding; providing for noncodification; and providing an effective date.

SUBJECT: Criminal procedure

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Section 2 of this act shall be known and may be cited as "Mackenzie's Law".

SECTION 2. AMENDATORY 22 O.S. 2021, 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~~ the defendant. 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~~ the district attorney and have them sworn and their testimony reduced to writing and signed by the witnesses at the cost of the county. 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.

Ninth: The preliminary hearing must be set within nine (9) months from the initial appearance of the defendant. If commencement of the preliminary hearing is delayed past the nine-month time limit, a show cause hearing shall be scheduled by the court to show reason for the delay. If the court fails to find good cause for the delay, the court shall schedule a preliminary hearing as soon as practicable.

SECTION 3. This act shall become effective November 1, 2022.

Passed the House of Representatives the 11th day of May, 2022.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 20th day of April, 2022.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_