

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3648

By: Dills of the House

and

Weaver of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

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

23 SECTION 2. AMENDATORY 22 O.S. 2021, Section 258, is
24 amended to read as follows:

1 Section 258. First: The witnesses must be examined in the
2 presence of the defendant, and may be cross-examined by ~~him~~ the
3 defendant. On the request of the district attorney, or the
4 defendant, all the testimony must be reduced to writing in the form
5 of questions and answers and signed by the witnesses, or the same
6 may be taken in shorthand and transcribed without signing, and in
7 both cases filed with the clerk of the district court, by the
8 examining magistrate, and may be used as provided in Section 333 of
9 this title. In no case shall the county be liable for the expense
10 in reducing such testimony to writing, unless ordered by the judge
11 of a court of record.

12 Second: The district attorney may, on approval of the county
13 judge or the district judge, issue subpoenas in felony cases and
14 call witnesses before ~~him~~ the district attorney and have them sworn
15 and their testimony reduced to writing and signed by the witnesses
16 at the cost of the county. Such examination must be confined to
17 some felony committed against the statutes of the state and triable
18 in that county, and the evidence so taken shall not be receivable in
19 any civil proceeding. A refusal to obey such subpoena or to be
20 sworn or to testify may be punished as a contempt on complaint and
21 showing to the county court, or district court, or the judges
22 thereof that proper cause exists therefor.

23 Third: No preliminary information shall be filed without the
24 consent or endorsement of the district attorney, unless the

1 defendant be taken in the commission of a felony, or the offense be
2 of such character that the accused is liable to escape before the
3 district attorney can be consulted. If the defendant is discharged
4 and the information is filed without authority from or endorsement
5 of the district attorney, the costs must be taxed to the prosecuting
6 witness, and the county shall not be liable therefor.

7 Fourth: The convening and session of a grand jury does not
8 dispense with the right of the district attorney to file complaints
9 and informations, conduct preliminary hearings and other routine
10 matters, unless otherwise specifically ordered, by a written order
11 of the court convening the grand jury; made on the court's own
12 motion, or at the request of the grand jury.

13 Fifth: There shall be no preliminary examinations in
14 misdemeanor cases.

15 Sixth: A preliminary magistrate shall have the authority to
16 limit the evidence presented at the preliminary hearing to that
17 which is relevant to the issues of: (1) whether the crime was
18 committed, and (2) whether there is probable cause to believe the
19 defendant committed the crime. Once a showing of probable cause is
20 made the magistrate shall terminate the preliminary hearing and
21 enter a bindover order; provided, however, that the preliminary
22 hearing shall be terminated only if the state made available for
23 inspection law enforcement reports within the prosecuting attorney's
24 knowledge or possession at the time to the defendant five (5)

1 working days prior to the date of the preliminary hearing. The
2 district attorney shall determine whether or not to make law
3 enforcement reports available prior to the preliminary hearing. If
4 reports are made available, the district attorney shall be required
5 to provide those law enforcement reports that the district attorney
6 knows to exist at the time of providing the reports, but this does
7 not include any physical evidence which may exist in the case. This
8 provision does not require the district attorney to provide copies
9 for the defendant, but only to make them available for inspection by
10 defense counsel. In the alternative, upon agreement of the state
11 and the defendant, the court may terminate the preliminary hearing
12 once a showing of probable cause is made.

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

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1 Eighth: The purpose of the preliminary hearing is to establish
2 probable cause that a crime was committed and probable cause that
3 the defendant committed the crime.

4 Ninth: The preliminary hearing must be set within nine (9)
5 months from the initial appearance of the defendant. If
6 commencement of the preliminary hearing is delayed past the nine-
7 month time limit, a show cause hearing shall be scheduled by the
8 court to show reason for the delay.

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

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11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
12 03/03/2022 - DO PASS, As Amended and Coauthored.