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April 12, 2022

AS AMENDED

ENGROSSED 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; providing for noncodification; and providing an effective date.

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

1 may be taken in shorthand and transcribed without signing, and in
2 both cases filed with the clerk of the district court, by the
3 examining magistrate, and may be used as provided in Section 333 of
4 this title. In no case shall the county be liable for the expense
5 in reducing such testimony to writing, unless ordered by the judge
6 of a court of record.

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

18 Third: No preliminary information shall be filed without the
19 consent or endorsement of the district attorney, unless the
20 defendant be taken in the commission of a felony, or the offense be
21 of such character that the accused is liable to escape before the
22 district attorney can be consulted. If the defendant is discharged
23 and the information is filed without authority from or endorsement
24

1 of the district attorney, the costs must be taxed to the prosecuting
2 witness, and the county shall not be liable therefor.

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

9 Fifth: There shall be no preliminary examinations in
10 misdemeanor cases.

11 Sixth: A preliminary magistrate shall have the authority to
12 limit the evidence presented at the preliminary hearing to that
13 which is relevant to the issues of: (1) whether the crime was
14 committed, and (2) whether there is probable cause to believe the
15 defendant committed the crime. Once a showing of probable cause is
16 made the magistrate shall terminate the preliminary hearing and
17 enter a bindover order; provided, however, that the preliminary
18 hearing shall be terminated only if the state made available for
19 inspection law enforcement reports within the prosecuting attorney's
20 knowledge or possession at the time to the defendant five (5)
21 working days prior to the date of the preliminary hearing. The
22 district attorney shall determine whether or not to make law
23 enforcement reports available prior to the preliminary hearing. If
24 reports are made available, the district attorney shall be required

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

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

19 Eighth: The purpose of the preliminary hearing is to establish
20 probable cause that a crime was committed and probable cause that
21 the defendant committed the crime.

22 Ninth: The preliminary hearing must be set within nine (9)
23 months from the initial appearance of the defendant. If
24 commencement of the preliminary hearing is delayed past the nine-

1 month time limit, a show cause hearing shall be scheduled by the
2 court to show reason for the delay. **If the court fails to find good**
3 **cause for the delay, the court shall schedule a preliminary hearing**
4 **as soon as practicable.**

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

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
7 April 12, 2022 - DO PASS AS AMENDED
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