

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2219

By: McDugle

4
5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Section 2002, as amended by Section 2,
9 Chapter 97, O.S.L. 2020 (22 O.S. Supp. 2020, Section
10 2002), which relates to the Oklahoma Criminal
11 Discovery Code; providing for the disclosure of
12 additional evidence after conviction or guilty plea;
13 extending duty of the state to disclose certain
14 information after the trial or plea; requiring
15 district attorneys and the Attorney General to allow
16 open-file discovery; declaring continuing obligation
17 of the state to disclose certain evidence upon its
18 discovery; and providing an effective date.

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

20 SECTION 1. AMENDATORY 22 O.S. 2011, Section 2002, as
21 amended by Section 2, Chapter 97, O.S.L. 2020 (22 O.S. Supp. 2020,
22 Section 2002), is amended to read as follows:

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

24 1. Upon request of the defense, the state shall disclose the
following:

- a. the names and addresses of witnesses which the state
intends to call at trial, together with their

- 1 relevant, written or recorded statement, if any, or if
2 none, significant summaries of any oral statement,
- 3 b. law enforcement reports made in connection with the
4 particular case,
- 5 c. any written or recorded statements and the substance
6 of any oral statements made by the accused or made by
7 a codefendant,
- 8 d. any reports or statements made by experts in
9 connection with the particular case, including results
10 of physical or mental examinations and of scientific
11 tests, experiments, or comparisons,
- 12 e. any books, papers, documents, photographs, tangible
13 objects, buildings or places which the prosecuting
14 attorney intends to use in the hearing or trial or
15 which were obtained from or belong to the accused,
- 16 f. any record of prior criminal convictions of the
17 defendant, or of any codefendant, and
- 18 g. Oklahoma State Bureau of Investigation (OSBI) rap
19 sheet/records check on any witness listed by the state
20 or the defense as a witness who will testify at trial,
21 as well as any convictions of any witness revealed
22 through additional record checks if the defense has
23 furnished Social Security numbers or date of birth for
24 their witnesses, except OSBI rap sheet/record checks

1 shall not provide date of birth, Social Security
2 number, home phone number or address.

3 2. The state shall provide the defendant any evidence favorable
4 to the defendant if such evidence is material to either guilt or
5 punishment.

6 3. The prosecuting attorney's obligations under this standard
7 extend to:

8 a. material and information in the possession or control
9 of members of the prosecutor's staff,

10 b. any information in the possession of law enforcement
11 agencies that regularly report to the prosecutor of
12 which the prosecutor should reasonably know, and

13 c. any information in the possession of law enforcement
14 agencies who have reported to the prosecutor with
15 reference to the particular case of which the
16 prosecutor should reasonably know.

17 4. a. If the state intends to introduce testimony of a
18 jailhouse informant, the state shall disclose at least
19 ten (10) days prior to trial:

20 (1) the complete criminal history of such informant,
21 including any dismissed charges,

22 (2) any deal, promise, inducement or benefit that the
23 state or law enforcement agency has made or may
24

- 1 make in the future to the jailhouse informant in
2 connection with the testimony of such informant,
3 (3) the specific statements or recordings made by the
4 suspect or defendant and the time, place and
5 manner of the disclosure to the jailhouse
6 informant,
7 (4) all other filed cases in which the state intended
8 to introduce the testimony of the jailhouse
9 informant in connection with a deal, promise,
10 inducement or benefit, the nature of the deal,
11 promise, inducement or benefit, and whether the
12 testimony was admitted in the case,
13 (5) whether at any time the jailhouse informant
14 recanted the testimony or statement, and if so, a
15 transcript or copy of such recantation, if any,
16 and
17 (6) any other information relevant to the credibility
18 of the informant.

19 b. Each district attorney's office shall maintain a
20 central record that tracks each case in which the
21 state intended to introduce the testimony of the
22 jailhouse informant against a suspect or defendant in
23 connection with a deal, promise, inducement or
24 benefit, the nature of the deal, promise, inducement

1 or benefit and whether such testimony or statements
2 were admitted in the case. Such record shall be sent
3 to the District Attorneys Council which shall maintain
4 a statewide record of such information. Records
5 maintained pursuant to this paragraph shall only be
6 accessible to prosecutors and shall not be subject to
7 the Oklahoma Open Records Act. By September 15 of
8 each year, the District Attorneys Council shall
9 publish an annual report of aggregate, de-identified
10 data regarding the total number of cases tracked
11 pursuant to this section, and the number of cases
12 added during the previous fiscal year pursuant to this
13 section by each district attorney's office. A copy of
14 the report shall be distributed to the Governor, the
15 President Pro Tempore of the Senate, the Speaker of
16 the House of Representatives and the chairs of the
17 Senate and House Judiciary Committees.

18 c. For purposes of this paragraph, "jailhouse informant"
19 means a person who provides, or who the prosecutor
20 intends to provide, testimony about admissions or
21 other relevant information made to him or her by the
22 suspect or defendant while both persons were detained
23 or incarcerated in a penal institution.

24 B. Disclosure of Evidence by the Defendant.

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

3 a. the names and addresses of witnesses which the defense
4 intends to call at trial, together with their
5 relevant, written or recorded statement, if any, or if
6 none, significant summaries of any oral statement,

7 b. the name and address of any witness, other than the
8 defendant, who will be called to show that the
9 defendant was not present at the time and place
10 specified in the information or indictment, together
11 with the witness' statement to that fact,

12 c. the names and addresses of any witness the defendant
13 will call, other than himself or herself, for
14 testimony relating to any mental disease, mental
15 defect, or other condition bearing upon his mental
16 state at the time the offense was allegedly committed,
17 together with the witness' statement of that fact, if
18 the statement is redacted by the court to preclude
19 disclosure of privileged communication.

20 2. A statement filed under subparagraph a, b or c of paragraph
21 1 of subsection A ~~or B~~ of this section or under the provisions of
22 this section is not admissible in evidence at trial. Information
23 obtained as a result of a statement filed under subsection A ~~or B~~ of
24 this section or under the provisions of this section is not

1 admissible in evidence at trial except to refute the testimony of a
2 witness whose identity subsection A of this section requires to be
3 disclosed.

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

10 a. the defendant intends to offer in evidence, except to
11 the extent that it contains any communication of the
12 defendant, or

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

20 C. Continuing Duty to Disclose.

21 1. If, prior to or during trial, or at any time following a
22 conviction after trial or guilty plea prior to the completion of the
23 defendant's sentence, including any term of parole, probation, or
24 supervised release, a party discovers additional evidence or

1 material previously requested or ordered, which is subject to
2 discovery or inspection under the Oklahoma Criminal Discovery Code,
3 such party shall promptly notify the other party, the attorney of
4 the other party, or the court of the existence of the additional
5 evidence or material.

6 2. The duty of the state to disclose upon request of the
7 defense all information required under subsection A of this section
8 shall continue after the trial or guilty plea until the sentence of
9 the defendant, including any term of parole, probation or supervised
10 release, is complete.

11 3. All Oklahoma district attorney's offices and the Office of
12 the Attorney General shall be required to allow open-file discovery
13 at all stages of a capital case, including during the direct appeal,
14 state post-conviction review, federal habeas review, and any
15 clemency proceeding.

16 4. Without the need for a request from the defense, the state
17 shall have a continuing obligation to disclose all evidence
18 specified under paragraph 2 of subsection A of this section
19 immediately upon its discovery by any party specified in paragraph 3
20 of subsection A of this section, after the trial or guilty plea,
21 until such a time when the sentence of the defendant, including any
22 term of parole, probation, or supervised release, is complete.

23 D. Time of Discovery.
24

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 Oklahoma Indigent ~~Defender~~ Defense
14 System, unless otherwise provided by law.

15 SECTION 2. This act shall become effective November 1, 2021.

16

17 58-1-6580 GRS 01/16/21

18

19

20

21

22

23

24