

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3306

By: Humphrey

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2021, Section 2002, which relates to the Oklahoma Criminal Discovery Code; adding gender-neutral language; providing for the disclosure of additional evidence after conviction or guilty plea; extending duty of the state to disclose certain information after the trial or plea; requiring district attorneys and the Attorney General to allow open-file discovery; declaring continuing obligation of the state to disclose certain evidence upon its discovery; updating name of agency; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2021, Section 2002, is amended to read as follows:

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

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 relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,

- b. law enforcement reports made in connection with the particular case,
- c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant,
- d. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons,
- e. any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused,
- f. any record of prior criminal convictions of the defendant, or of any codefendant, and
- g. Oklahoma State Bureau of Investigation (OSBI) rap sheet/records check on any witness listed by the state or the defense as a witness who will testify at trial, as well as any convictions of any witness revealed through additional record checks if the defense has furnished Social Security numbers or date of birth for their witnesses, except OSBI rap sheet/record checks shall not provide date of birth, Social Security number, home phone number or address.

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

4 3. The prosecuting attorney's obligations under this standard
5 extend to:

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

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

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

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

18 (1) the complete criminal history of such informant,
19 including any dismissed charges,

20 (2) any deal, promise, inducement or benefit that the
21 state or law enforcement agency has made or may
22 make in the future to the jailhouse informant in
23 connection with the testimony of such informant,
24

1 (3) the specific statements or recordings made by the
2 suspect or defendant and the time, place and
3 manner of the disclosure to the jailhouse
4 informant,

5 (4) all other filed cases in which the state intended
6 to introduce the testimony of the jailhouse
7 informant in connection with a deal, promise,
8 inducement or benefit, the nature of the deal,
9 promise, inducement or benefit, and whether the
10 testimony was admitted in the case,

11 (5) whether at any time the jailhouse informant
12 recanted the testimony or statement, and if so, a
13 transcript or copy of such recantation, if any,
14 and

15 (6) any other information relevant to the credibility
16 of the informant.

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

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

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

22 B. Disclosure of Evidence by the Defendant.

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

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

18 2. A statement filed under subparagraph a, b or c of paragraph
19 1 of subsection A or B of this section is not admissible in evidence
20 at trial. Information obtained as a result of a statement filed
21 under subsection A or B of this section is not admissible in
22 evidence at trial except to refute the testimony of a witness whose
23 identity subsection A of this section requires to be disclosed.

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

7 a. the defendant intends to offer in evidence, except to
8 the extent that it contains any communication of the
9 defendant, or

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

17 C. Continuing Duty to Disclose.

18 1. If, prior to or during trial, or at any time following a
19 conviction after trial or guilty plea prior to the completion of the
20 sentence, including any term of parole, probation, or supervised
21 release, a party discovers additional evidence or material
22 previously requested or ordered, which is subject to discovery or
23 inspection under the Oklahoma Criminal Discovery Code, such party
24 shall promptly notify the other party, the attorney of the other

1 party, or the court of the existence of the additional evidence or
2 material.

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

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

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

20 D. Time of Discovery.

21 Motions for discovery may be made at the time of the district
22 court arraignment or thereafter; provided, that requests for police
23 reports may be made subject to the provisions of Section 258 of this
24 title. However, a request pursuant to Section 258 of this title

1 shall be subject to the discretion of the district attorney. All
2 issues relating to discovery, except as otherwise provided, will be
3 completed at least ten (10) days prior to trial. The court may
4 specify the time, place and manner of making the discovery and may
5 prescribe such terms and conditions as are just.

6 E. Regulation of Discovery.

7 1. Protective and Modifying Orders. Upon motion of the state
8 or defendant, the court may at any time order that specified
9 disclosures be restricted, or make any other protective order. If
10 the court enters an order restricting specified disclosures, the
11 entire text of the material restricted shall be sealed and preserved
12 in the records of the court to be made available to the appellate
13 court in the event of an appeal.

14 2. Failure to Comply with a Request. If at any time during the
15 course of the proceedings it is brought to the attention of the
16 court that a party has failed to comply with this rule, the court
17 may order such party to permit the discovery or inspection, grant
18 continuance, or prohibit the party from introducing evidence not
19 disclosed, or it may enter such other order as it deems just under
20 the circumstances.

21 3. The discovery order shall not include discovery of legal
22 work product of either attorney which is deemed to include legal
23 research or those portions of records, correspondence, reports, or
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1 memoranda which are only the opinions, theories, or conclusions of
2 the attorney or the attorney's legal staff.

3 F. Reasonable cost of copying, duplicating, videotaping,
4 developing or any other cost associated with this Code for items
5 requested shall be paid by the party so requesting; however, any
6 item which was obtained from the defendant by the state of which
7 copies are requested by the defendant shall be paid by the state.
8 Provided, if the court determines the defendant is indigent and
9 without funds to pay the cost of reproduction of the required items,
10 the cost shall be paid by the Oklahoma Indigent Defender Defense
11 System, unless otherwise provided by law.

12 SECTION 2. This act shall become effective November 1, 2022.

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14 58-2-8755 GRS 12/21/21
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