

1 STATE OF OKLAHOMA

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

3 SENATE BILL 391

By: Brooks

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5
6 AS INTRODUCED

7 An Act relating to criminal discovery; amending 22
8 O.S. 2011, Section 258, which relates to preliminary
9 examinations and proceedings; providing gender
10 neutral language; modifying conditions for hearing
11 termination; removing certain discretion; modifying
12 requirements; amending 22 O.S. 2011, Section 2002, as
13 amended by Section 2, Chapter 97, O.S.L. 2020 (22
14 O.S. Supp. 2020, Section 2002), which relates to
15 discovery; modifying request requirement; removing
16 certain discretion; authorizing request for certain
17 records; establishing time for production of records;
18 allowing for certain motion; requiring the issuance
19 of an order upon specified finding; authorizing
20 issuance of subpoena duces tecum; requiring certain
21 notice; and providing an effective date.

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

23 SECTION 1. AMENDATORY 22 O.S. 2011, Section 258, is
24 amended to read as follows:

25 Section 258. First: The witnesses must be examined in the
26 presence of the defendant, and may be cross-examined by him or her.
27 On the request of the district attorney, or the defendant, all the
28 testimony must be reduced to writing in the form of questions and
29 answers and signed by the witnesses, or the same may be taken in

1 shorthand and transcribed without signing, and in both cases filed
2 with the clerk of the district court, by the examining magistrate,
3 and may be used as provided in Section 333 of this title. In no
4 case shall the county be liable for the expense in reducing such
5 testimony to writing, unless ordered by the judge of a court of
6 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 or her and have them sworn and their
10 testimony reduced to writing and signed by the witnesses at the cost
11 of the county. Such examination must be confined to some felony
12 committed against the statutes of the state and triable in that
13 county, and the evidence so taken shall not be receivable in any
14 civil proceeding. A refusal to obey such subpoena or to be sworn or
15 to testify may be punished as a contempt on complaint and showing to
16 the county court, or district court, or the judges thereof that
17 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
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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~~ or provided the
21 records requested pursuant to paragraph 2 of subsection D of Section
22 2002 of this title five (5) working days prior to the date of the
23 preliminary hearing. ~~The district attorney shall determine whether~~
24 ~~or not to make law enforcement reports available prior to the~~

1 ~~preliminary hearing. If reports are made available, the district~~
2 ~~attorney shall be required to provide those law enforcement reports~~
3 ~~that the district attorney knows to exist at the time of providing~~
4 ~~the reports, but this does not include any physical evidence which~~
5 ~~may exist in the case. This provision does not require the district~~
6 ~~attorney to provide copies for the defendant, but only to make them~~
7 ~~available for inspection by defense counsel~~ to the defendant any
8 evidence other than that which may be requested pursuant to
9 paragraph 2 of subsection D of Section 2002 of this title. In the
10 alternative, upon agreement of the state and the defendant, the
11 court may terminate the preliminary hearing once a showing of
12 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.

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

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

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

- 10 a. the names and addresses of witnesses which the state
11 intends to call at trial, together with their
12 relevant, written or recorded statement, if any, or if
13 none, significant summaries of any oral statement,
- 14 b. law enforcement reports made in connection with the
15 particular case,
- 16 c. any written or recorded statements and the substance
17 of any oral statements made by the accused or made by
18 a codefendant,
- 19 d. any reports or statements made by experts in
20 connection with the particular case, including results
21 of physical or mental examinations and of scientific
22 tests, experiments, or comparisons,
- 23 e. any books, papers, documents, photographs, tangible
24 objects, buildings or places which the prosecuting
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1 attorney intends to use in the hearing or trial or
2 which were obtained from or belong to the accused,
3 f. any record of prior criminal convictions of the
4 defendant, or of any codefendant, and
5 g. Oklahoma State Bureau of Investigation (OSBI) rap
6 sheet/records check on any witness listed by the state
7 or the defense as a witness who will testify at trial,
8 as well as any convictions of any witness revealed
9 through additional record checks if the defense has
10 furnished Social Security numbers or date of birth for
11 their witnesses, except OSBI rap sheet/record checks
12 shall not provide date of birth, Social Security
13 number, home phone number or address.

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

17 3. The prosecuting attorney's obligations under this standard
18 extend to:

- 19 a. material and information in the possession or control
20 of members of the prosecutor's staff,
21 b. any information in the possession of law enforcement
22 agencies that regularly report to the prosecutor of
23 which the prosecutor should reasonably know, and
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1 c. any information in the possession of law enforcement
2 agencies who have reported to the prosecutor with
3 reference to the particular case of which the
4 prosecutor should reasonably know.

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

8 (1) the complete criminal history of such informant,
9 including any dismissed charges,

10 (2) any deal, promise, inducement or benefit that the
11 state or law enforcement agency has made or may
12 make in the future to the jailhouse informant in
13 connection with the testimony of such informant,
14 (3) the specific statements or recordings made by the
15 suspect or defendant and the time, place and
16 manner of the disclosure to the jailhouse
17 informant,

18 (4) all other filed cases in which the state intended
19 to introduce the testimony of the jailhouse
20 informant in connection with a deal, promise,
21 inducement or benefit, the nature of the deal,
22 promise, inducement or benefit, and whether the
23 testimony was admitted in the case,
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1 (5) whether at any time the jailhouse informant
2 recanted the testimony or statement, and if so, a
3 transcript or copy of such recantation, if any,
4 and
5 (6) any other information relevant to the credibility
6 of the informant.

7 b. Each district attorney's office shall maintain a
8 central record that tracks each case in which the
9 state intended to introduce the testimony of the
10 jailhouse informant against a suspect or defendant in
11 connection with a deal, promise, inducement or
12 benefit, the nature of the deal, promise, inducement
13 or benefit and whether such testimony or statements
14 were admitted in the case. Such record shall be sent
15 to the District Attorneys Council which shall maintain
16 a statewide record of such information. Records
17 maintained pursuant to this paragraph shall only be
18 accessible to prosecutors and shall not be subject to
19 the Oklahoma Open Records Act. By September 15 of
20 each year, the District Attorneys Council shall
21 publish an annual report of aggregate, de-identified
22 data regarding the total number of cases tracked
23 pursuant to this section, and the number of cases
24 added during the previous fiscal year pursuant to this

1 section by each district attorney's office. A copy of
2 the report shall be distributed to the Governor, the
3 President Pro Tempore of the Senate, the Speaker of
4 the House of Representatives and the chairs of the
5 Senate and House Judiciary Committees.

6 c. For purposes of this paragraph, "jailhouse informant"
7 means a person who provides, or who the prosecutor
8 intends to provide, testimony about admissions or
9 other relevant information made to him or her by the
10 suspect or defendant while both persons were detained
11 or incarcerated in a penal institution.

12 B. Disclosure of Evidence by the Defendant.

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

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

9 2. A statement filed under subparagraph a, b or c of paragraph
10 1 of subsection A or B of this section is not admissible in evidence
11 at trial. Information obtained as a result of a statement filed
12 under subsection A or B of this section is not admissible in
13 evidence at trial except to refute the testimony of a witness whose
14 identity subsection A of this section requires to be disclosed.

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

21 a. the defendant intends to offer in evidence, except to
22 the extent that it contains any communication of the
23 defendant, or
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1 b. is a report or statement as to a physical or mental
2 examination or scientific test or experiment made in
3 connection with the particular case prepared by and
4 relating to the anticipated testimony of a person whom
5 the defendant intends to call as a witness, provided
6 the report or statement is redacted by the court to
7 preclude disclosure of privileged communication.

8 C. Continuing Duty to Disclose.

9 If, prior to or during trial, a party discovers additional
10 evidence or material previously requested or ordered, which is
11 subject to discovery or inspection under the Oklahoma Criminal
12 Discovery Code, such party shall promptly notify the other party,
13 the attorney of the other party, or the court of the existence of
14 the additional evidence or material.

15 D. Time of Discovery.

16 1. Motions for discovery may be made at the time of the
17 district court arraignment or thereafter; ~~provided that requests for~~
18 ~~police reports may be made subject to the provisions of Section 258~~
19 ~~of this title. However, a request pursuant to Section 258 of this~~
20 ~~title shall be subject to the discretion of the district attorney.~~

21 All issues relating to discovery, except as otherwise provided, will
22 be completed at least ten (10) days prior to trial. The court may
23 specify the time, place and manner of making the discovery and may
24 prescribe such terms and conditions as are just.

1 2. Notwithstanding the provisions of paragraph 1 of this
2 subsection, upon initial arraignment or thereafter, a defendant or
3 his or her counsel of record may submit a written motion requesting
4 that the district attorney produce or make available for inspection
5 the following records believed to be in the possession of the
6 district attorney at the time of the request:

7 a. law enforcement reports,

8 b. body camera recordings,

9 c. forensic interview records and recordings,

10 d. laboratory reports,

11 e. photographs, and

12 f. any intercepted oral or electronic communications as
13 defined in Section 176.2 of Title 13 of the Oklahoma
14 Statutes.

15 3. If a defendant or counsel requests that the records listed
16 in paragraph 2 of this subsection be made available for inspection,
17 such records shall be made available at a time mutually agreed upon
18 by both parties. If a defendant or counsel requests that the
19 records be produced, and the district attorney does not have good
20 cause to object to the request, then the district attorney shall
21 produce the requested records on a date not to exceed fifteen (15)
22 business days from the receipt of the written motion. If after
23 fifteen (15) business days the district attorney fails to produce
24 the requested records in his or her possession, a defendant may

1 submit a motion to the court to order the production of the
2 requested records. Upon finding that the district attorney did not
3 have good cause in failing to produce the requested records, a court
4 shall issue an order requiring the district attorney to produce the
5 records requested.

6 4. Notwithstanding the filing of a motion to order the
7 production of records, a defendant or counsel may issue a subpoena
8 duces tecum to any law enforcement entity within the state that
9 assisted in the arrest of the defendant and require such entity to
10 produce the records requested in the motion. As an officer of the
11 court, an attorney authorized to practice law in this state may
12 issue and sign a subpoena on behalf of a court in this state. A
13 copy of any subpoena duces tecum shall be provided to the district
14 attorney at the time of its execution.

15 E. Regulation of Discovery.

16 1. Protective and Modifying Orders. Upon motion of the state
17 or defendant, the court may at any time order that specified
18 disclosures be restricted, or make any other protective order. If
19 the court enters an order restricting specified disclosures, the
20 entire text of the material restricted shall be sealed and preserved
21 in the records of the court to be made available to the appellate
22 court in the event of an appeal.

23 2. Failure to Comply with a Request. If at any time during the
24 course of the proceedings it is brought to the attention of the

1 court that a party has failed to comply with this rule, the court
2 may order such party to permit the discovery or inspection, grant
3 continuance, or prohibit the party from introducing evidence not
4 disclosed, or it may enter such other order as it deems just under
5 the circumstances.

6 3. The discovery order shall not include discovery of legal
7 work product of either attorney which is deemed to include legal
8 research or those portions of records, correspondence, reports, or
9 memoranda which are only the opinions, theories, or conclusions of
10 the attorney or the attorney's legal staff.

11 F. Reasonable cost of copying, duplicating, videotaping,
12 developing or any other cost associated with this Code for items
13 requested shall be paid by the party so requesting; however, any
14 item which was obtained from the defendant by the state of which
15 copies are requested by the defendant shall be paid by the state.
16 Provided, if the court determines the defendant is indigent and
17 without funds to pay the cost of reproduction of the required items,
18 the cost shall be paid by the Indigent Defender System, unless
19 otherwise provided by law.

20 SECTION 3. This act shall become effective November 1, 2021.
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