

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 ENGROSSED SENATE
5 BILL NO. 1385

By: Daniels of the Senate

and

Kannady of the House

6
7
8
9 An Act relating to informant testimony; amending 12
10 O.S. 2011, Section 2510, which relates to identity of
informant; conforming language; establishing
11 exception to certain privilege; updating statutory
language; amending 22 O.S. 2011, Section 2002, which
12 relates to disclosure of evidence; requiring state to
disclose information related to certain informants
13 within specified time period; requiring compilation
and maintenance of certain records; directing
14 accessibility of certain records; requiring
publication and distribution of certain annual
15 report; defining term; and providing an effective
date.

16
17
18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 12 O.S. 2011, Section 2510, is
20 amended to read as follows:

21 Section 2510. A. The United States, state or subdivision
22 thereof has a privilege to refuse to disclose the identity of a
23 person who has furnished information relating to or assisting in an
24 investigation of a possible violation of a law to a law enforcement

1 officer or member of a legislative committee or its staff conducting
2 the investigation.

3 B. The privilege under this section may be claimed by an
4 appropriate representative of the public entity to which the
5 information was furnished.

6 C. The following shall be exceptions to the privilege granted
7 in this section:

8 1. No privilege exists if the identity of the ~~informer~~
9 informant or the ~~informer's~~ informant's interest in the subject
10 matter of the ~~informer's~~ informant's communication has been
11 disclosed to those who would have cause to resent the communication
12 by a holder of the privilege or by the ~~informer's~~ informant's own
13 action, ~~or~~ if the ~~informer~~ informant appears as a witness for the
14 government, or if information regarding the informant is required to
15 be disclosed pursuant to paragraph 4 of subsection A of Section 2002
16 of Title 22 of the Oklahoma Statutes.

17 2. If the informant is also a material witness to the criminal
18 conduct with which the defendant is charged, or was a participant in
19 ~~said~~ the criminal conduct conjointly with the defendant, or is shown
20 to be able to give testimony relevant to a material issue in the
21 case.

22 3. If information from an ~~informer~~ informant is relied upon to
23 establish the legality of the means by which evidence was obtained
24 and the court or the defendant is not satisfied that the information

1 was received from an ~~informer~~ informant reasonably believed to be
2 reliable or credible, the court or defendant may require the
3 identity of the ~~informer~~ informant to be disclosed. The court
4 shall, on request of the government, direct that the disclosure be
5 made in chambers. All counsel and parties concerned with the issue
6 of legality shall be permitted to be present at every stage of a
7 proceeding under this subsection except a disclosure in chambers if
8 the court determines that no counsel or party shall be permitted to
9 be present. If disclosure of the identity of the ~~informer~~ informant
10 is made in chambers, the record thereof shall be sealed and
11 preserved to be made available to the appellate court in the event
12 of an appeal, and the contents shall not otherwise be revealed
13 without consent of the government.

14 SECTION 2. AMENDATORY 22 O.S. 2011, Section 2002, is
15 amended to read as follows:

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

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

- 19 a. the names and addresses of witnesses which the state
20 intends to call at trial, together with their
21 relevant, written or recorded statement, if any, or if
22 none, significant summaries of any oral statement,
- 23 b. law enforcement reports made in connection with the
24 particular case,

- 1 c. any written or recorded statements and the substance
2 of any oral statements made by the accused or made by
3 a codefendant,
- 4 d. any reports or statements made by experts in
5 connection with the particular case, including results
6 of physical or mental examinations and of scientific
7 tests, experiments, or comparisons,
- 8 e. any books, papers, documents, photographs, tangible
9 objects, buildings or places which the prosecuting
10 attorney intends to use in the hearing or trial or
11 which were obtained from or belong to the accused,
- 12 f. any record of prior criminal convictions of the
13 defendant, or of any codefendant, and
- 14 g. Oklahoma State Bureau of Investigation (OSBI) rap
15 sheet/records check on any witness listed by the state
16 or the defense as a witness who will testify at trial,
17 as well as any convictions of any witness revealed
18 through additional record checks if the defense has
19 furnished social security numbers or date of birth for
20 their witnesses, except OSBI rap sheet/record checks
21 shall not provide date of birth, social security
22 number, home phone number or address.
- 23
24

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, for testimony relating
12 to any mental disease, mental defect, or other
13 condition bearing upon his mental state at the time
14 the offense was allegedly committed, together with the
15 witness' statement of that fact, if the statement is
16 redacted by the court to preclude disclosure of
17 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 If, prior to or during trial, a party discovers additional
19 evidence or material previously requested or ordered, which is
20 subject to discovery or inspection under the Oklahoma Criminal
21 Discovery Code, such party shall promptly notify the other party,
22 the attorney of the other party, or the court of the existence of
23 the additional evidence or material.

24 D. Time of Discovery.

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 Indigent Defender System, unless
14 otherwise provided by law.

15 SECTION 3. This act shall become effective November 1, 2020.

16
17 DIRECT TO CALENDAR.
18
19
20
21
22
23
24