

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1640

By: Brooks

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6 AS INTRODUCED

7 An Act relating to criminal discovery; amending 22
8 O.S. 2011, Sections 258 and 2002, which relate to
9 preliminary examinations and proceedings and time for
10 discovery; modifying conditions for hearing
11 termination; removing certain discretion; providing
12 certain exception; removing certain discretion;
13 authorizing request for certain records; allowing for
14 inspection of records upon mutual agreement;
15 requiring production of certain records; fixing time
16 for production of records; allowing for certain
17 motion; mandating certain order be issued upon
18 specified finding; authorizing subpoena duces tecum
19 for specified purpose; authorizing attorney to issue
20 and sign subpoena duces tecum; providing certain
21 notice; and providing an effective date.

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

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

27 Section 258. First: The witnesses must be examined in the
28 presence of the defendant, and may be cross-examined by him. On the
29 request of the district attorney, or the defendant, all the
30 testimony must be reduced to writing in the form of questions and
31 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 and have them sworn and their testimony
10 reduced to writing and signed by the witnesses at the cost of the
11 county. Such examination must be confined to some felony committed
12 against the statutes of the state and triable in that county, and
13 the evidence so taken shall not be receivable in any civil
14 proceeding. A refusal to obey such subpoena or to be sworn or to
15 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,
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, is
5 amended to read as follows:

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

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

- 9 a. the names and addresses of witnesses which the state
10 intends to call at trial, together with their
11 relevant, written or recorded statement, if any, or if
12 none, significant summaries of any oral statement,
- 13 b. law enforcement reports made in connection with the
14 particular case,
- 15 c. any written or recorded statements and the substance
16 of any oral statements made by the accused or made by
17 a codefendant,
- 18 d. any reports or statements made by experts in
19 connection with the particular case, including results
20 of physical or mental examinations and of scientific
21 tests, experiments, or comparisons,
- 22 e. any books, papers, documents, photographs, tangible
23 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 B. Disclosure of Evidence by the Defendant.

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

8 a. the names and addresses of witnesses which the defense
9 intends to call at trial, together with their
10 relevant, written or recorded statement, if any, or if
11 none, significant summaries of any oral statement,

12 b. the name and address of any witness, other than the
13 defendant, who will be called to show that the
14 defendant was not present at the time and place
15 specified in the information or indictment, together
16 with the witness' statement to that fact,

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

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

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

13 a. the defendant intends to offer in evidence, except to
14 the extent that it contains any communication of the
15 defendant, or

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

23 C. Continuing Duty to Disclose.
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1 If, prior to or during trial, a party discovers additional
2 evidence or material previously requested or ordered, which is
3 subject to discovery or inspection under the Oklahoma Criminal
4 Discovery Code, such party shall promptly notify the other party,
5 the attorney of the other party, or the court of the existence of
6 the additional evidence or material.

7 D. Time of Discovery.

8 1. Motions for discovery may be made at the time of the
9 district court arraignment or thereafter; ~~provided that requests for~~
10 ~~police reports may be made subject to the provisions of Section 258~~
11 ~~of this title. However, a request pursuant to Section 258 of this~~
12 ~~title shall be subject to the discretion of the district attorney.~~

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

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

23 a. law enforcement reports,

24 b. body camera recordings,

- 1 c. forensic interview records and recordings,
2 d. laboratory reports,
3 e. photographs, and
4 f. any intercepted oral or electronic communications as
5 defined in Section 176.2 of Title 13 of the Oklahoma
6 Statutes.

7 If a defendant or counsel requests that the records be made
8 available for inspection, such records shall be made available at a
9 time mutually agreed upon by both parties. If a defendant or
10 counsel requests that the records be produced, and the district
11 attorney does not have good cause to object to the request, then the
12 district attorney shall produce the requested records on a date not
13 to exceed fifteen (15) business days from the receipt of the written
14 motion. The timing shall exclude weekends and legal holidays. If
15 after fifteen (15) business days the district attorney fails to
16 produce the requested records in his or her possession, a defendant
17 or counsel may submit a motion to the court to order the production
18 of the requested records. Upon finding that the district attorney
19 did not have good cause in failing to produce the requested records,
20 a court shall issue an order requiring the district attorney to
21 produce the records requested.

22 Notwithstanding the filing of a motion to order production of
23 records, a defendant or counsel may issue a subpoena duces tecum to
24 any law enforcement entity within the state that assisted in the

1 arrest of the defendant and require such entity to produce the
2 records requested in the motion. As an officer of the court, an
3 attorney authorized to practice law in this state may issue and sign
4 a subpoena on behalf of a court in this state. A copy of any
5 subpoena duces tecum shall be provided to the district attorney at
6 the time of its execution.

7 E. Regulation of Discovery.

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

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

22 3. The discovery order shall not include discovery of legal
23 work product of either attorney which is deemed to include legal
24 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 Indigent Defender System, unless
11 otherwise provided by law.

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

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