

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1019

By: McEntire

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5  
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22  
8 O.S. 2011, Section 258, which relates to proceedings  
9 for preliminary examinations; clarifying evidentiary  
10 requirements for preliminary examinations; deleting  
11 discretion of district attorney to determine release  
12 of law enforcement reports prior to preliminary  
13 hearing; amending 22 O.S. 2011, Section 2002, which  
14 relates to the Oklahoma Criminal Discovery Code;  
15 eliminating district attorney discretion for certain  
16 discovery requests; modifying time limitation for  
17 completion of discovery issues; and providing an  
18 effective date.

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

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

22 Section 258. ~~First:~~ A. The witnesses must be examined in the  
23 presence of the defendant, and may be cross-examined by ~~him~~ the  
24 defendant. On the request of the district attorney, or the  
25 defendant, all the testimony must be reduced to writing in the form  
26 of questions and answers and signed by the witnesses, or the same  
27 may be taken in shorthand and transcribed without signing, and in  
28 both cases filed with the clerk of the district court, by the

1 examining magistrate, and may be used as provided in Section 333 of  
2 this title. In no case shall the county be liable for the expense  
3 in reducing such testimony to writing, unless ordered by the judge  
4 of a court of record.

5 ~~Second:~~ B. The district attorney may, on approval of the county  
6 judge or the district judge, issue subpoenas in felony cases and  
7 call witnesses before ~~him~~ the district attorney and have them sworn  
8 and their testimony reduced to writing and signed by the witnesses  
9 at the cost of the county. Such examination must be confined to  
10 some felony committed against the statutes of the state and triable  
11 in that county, and the evidence so taken shall not be receivable in  
12 any civil proceeding. A refusal to obey such subpoena or to be  
13 sworn or to testify may be punished as a contempt on complaint and  
14 showing to the county court, or district court, or the judges  
15 thereof that proper cause exists therefor.

16 ~~Third:~~ C. No preliminary information shall be filed without the  
17 consent or endorsement of the district attorney, unless the  
18 defendant be taken in the commission of a felony, or the offense be  
19 of such character that the accused is liable to escape before the  
20 district attorney can be consulted. If the defendant is discharged  
21 and the information is filed without authority from or endorsement  
22 of the district attorney, the costs must be taxed to the prosecuting  
23 witness, and the county shall not be liable therefor.

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1 ~~Fourth:~~ D. The convening and session of a grand jury does not  
2 dispense with the right of the district attorney to file complaints  
3 and informations, conduct preliminary hearings and other routine  
4 matters, unless otherwise specifically ordered, by a written order  
5 of the court convening the grand jury; made on ~~the court's own~~ a  
6 motion by the court, or at the request of the grand jury.

7 ~~Fifth:~~ E. There shall be no preliminary examinations in  
8 misdemeanor cases.

9 ~~Sixth:~~ F. A preliminary magistrate shall have the authority to  
10 limit the evidence presented at the preliminary hearing to that  
11 which is relevant to the issues of: ~~(1) whether~~

12 1. Whether the crime was committed~~r;~~ and ~~(2) whether~~

13 2. Whether there is probable cause to believe the defendant  
14 committed the crime.

15 Once a showing of probable cause is made~~,~~ the magistrate shall  
16 terminate the preliminary hearing and enter a bindover order;  
17 provided, however, that the preliminary hearing shall be terminated  
18 only if the state made available ~~for inspection law enforcement~~  
19 ~~reports~~ all discovery requested by the defendant within the  
20 ~~prosecuting attorney's~~ knowledge or possession of the prosecuting  
21 attorney at the time to the defendant five (5) working days prior to  
22 the date of the preliminary hearing unless otherwise ordered by the  
23 court for good cause shown. ~~The district attorney shall determine~~  
24 ~~whether or not to make law enforcement reports available prior to~~

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

11 ~~Seventh:~~ G. A preliminary magistrate shall accept into evidence  
12 as proof of prior convictions a noncertified copy of a Judgment and  
13 Sentence when the copy appears to the preliminary magistrate to be  
14 patently accurate. The district attorney shall make a noncertified  
15 copy of the Judgment and Sentence available to the defendant no  
16 fewer than five (5) days prior to the hearing. If such copy is not  
17 made available five (5) days prior to the hearing, the court shall  
18 continue the portion of the hearing to which the copy is relevant  
19 for such time as the defendant requests, not to exceed five (5) days  
20 subsequent to the receipt of the copy.

21 ~~Eighth:~~ H. The purpose of the preliminary hearing is to  
22 establish probable cause that a crime was committed and probable  
23 cause that the defendant committed the crime.

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

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

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

- 6 a. the names and addresses of witnesses which the state  
7 intends to call at trial, together with their  
8 relevant, written or recorded statement, if any, or if  
9 none, significant summaries of any oral statement,
- 10 b. law enforcement reports made in connection with the  
11 particular case,
- 12 c. any written or recorded statements and the substance  
13 of any oral statements made by the accused or made by  
14 a codefendant,
- 15 d. any reports or statements made by experts in  
16 connection with the particular case, including results  
17 of physical or mental examinations and of scientific  
18 tests, experiments, or comparisons,
- 19 e. any books, papers, documents, photographs, tangible  
20 objects, buildings or places which the prosecuting  
21 attorney intends to use in the hearing or trial or  
22 which were obtained from or belong to the accused,
- 23 f. any record of prior criminal convictions of the  
24 defendant, or of any codefendant, and

1 g. Oklahoma State Bureau of Investigation (OSBI) rap  
2 sheet/records check on any witness listed by the state  
3 or the defense as a witness who will testify at trial,  
4 as well as any convictions of any witness revealed  
5 through additional record checks if the defense has  
6 furnished social security numbers or date of birth for  
7 their witnesses, except OSBI rap sheet/record checks  
8 shall not provide date of birth, ~~social security~~  
9 Social Security number, home phone number or address.

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

13 3. The prosecuting attorney's obligations under this standard  
14 extend to:

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

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, and  
12 c. the names and addresses of any witness the defendant  
13 will call, other than himself, for testimony relating  
14 to any mental disease, mental defect, or other  
15 condition bearing upon his mental state at the time  
16 the offense was allegedly committed, together with the  
17 witness' statement of that fact, if the statement is  
18 redacted by the court to preclude disclosure of  
19 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 is not admissible in evidence  
22 at trial. Information obtained as a result of a statement filed  
23 under subsection A or B of this section is not admissible in  
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1 evidence at trial except to refute the testimony of a witness whose  
2 identity subsection A of this section requires to be disclosed.

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

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

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

19 C. Continuing Duty to Disclose.

20 If, prior to or during trial, a party discovers additional  
21 evidence or material previously requested or ordered, which is  
22 subject to discovery or inspection under the Oklahoma Criminal  
23 Discovery Code, such party shall promptly notify the other party,  
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1 the attorney of the other party, or the court of the existence of  
2 the additional evidence or material.

3 D. Time of Discovery.

4 Motions for discovery may be made at the time of the district  
5 court arraignment or thereafter; ~~provided that requests for police~~  
6 ~~reports may be made subject to the provisions of Section 258 of this~~  
7 ~~title. However, a request pursuant to Section 258 of this title~~  
8 ~~shall be subject to the discretion of the district attorney. All~~  
9 issues relating to discovery, except as otherwise provided, will be  
10 completed ~~at least ten (10) days prior to trial~~ within twenty (20)  
11 days of receiving a request. The court may specify the time, place  
12 and manner of making the discovery and may prescribe such terms and  
13 conditions as are just.

14 E. Regulation of Discovery.

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

22 2. Failure to Comply with a Request. If at any time during the  
23 course of the proceedings it is brought to the attention of the  
24 court that a party has failed to comply with this rule, the court

1 may order such party to permit the discovery or inspection, grant  
2 continuance, or prohibit the party from introducing evidence not  
3 disclosed, or it may enter such other order as it deems just under  
4 the circumstances.

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

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

19 SECTION 3. This act shall become effective November 1, 2019.

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21 57-1-5436 GRS 01/07/19

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