

1 ENGROSSED SENATE  
2 BILL NO. 1385

By: Daniels of the Senate

3 and

4 Kannady of the House

5  
6 An Act relating to informant testimony; amending 12  
7 O.S. 2011, Section 2510, which relates to identity of  
8 informant; conforming language; establishing  
9 exception to certain privilege; updating statutory  
10 language; amending 22 O.S. 2011, Section 2002, which  
11 relates to disclosure of evidence; requiring state to  
12 disclose information related to certain informants  
13 within specified time period; requiring compilation  
14 and maintenance of certain records; directing  
15 accessibility of certain records; requiring  
16 publication and distribution of certain annual  
17 report; defining term; and providing an effective  
18 date.

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

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

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

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

4 C. The following shall be exceptions to the privilege granted  
5 in this section:

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

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

20 3. If information from an ~~informer~~ informant is relied upon to  
21 establish the legality of the means by which evidence was obtained  
22 and the court or the defendant is not satisfied that the information  
23 was received from an ~~informer~~ informant reasonably believed to be  
24 reliable or credible, the court or defendant may require the

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

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

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

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

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

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- 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.
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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,

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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.  
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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.  
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