

1 **SENATE FLOOR VERSION**

2 February 11, 2020

3 **AS AMENDED**

4 SENATE BILL NO. 1385

By: Daniels of the Senate

and

Kannady of the House

6
7
8 **[informant testimony - identity of informant -**
9 **exception to certain privilege -disclosure of**
10 **evidence - records - effective date]**

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

21 B. The privilege under this section may be claimed by an
22 appropriate representative of the public entity to which the
23 information was furnished.

1 C. The following shall be exceptions to the privilege granted
2 in this section:

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

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

17 3. If information from an ~~informer~~ informant is relied upon to
18 establish the legality of the means by which evidence was obtained
19 and the court or the defendant is not satisfied that the information
20 was received from an ~~informer~~ informant reasonably believed to be
21 reliable or credible, the court or defendant may require the
22 identity of the ~~informer~~ informant to be disclosed. The court
23 shall, on request of the government, direct that the disclosure be
24 made in chambers. All counsel and parties concerned with the issue

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

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

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

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

- 14 a. the names and addresses of witnesses which the state
15 intends to call at trial, together with their
16 relevant, written or recorded statement, if any, or if
17 none, significant summaries of any oral statement,
- 18 b. law enforcement reports made in connection with the
19 particular case,
- 20 c. any written or recorded statements and the substance
21 of any oral statements made by the accused or made by
22 a codefendant,
- 23 d. any reports or statements made by experts in
24 connection with the particular case, including results

1 of physical or mental examinations and of scientific
2 tests, experiments, or comparisons,

3 e. any books, papers, documents, photographs, tangible
4 objects, buildings or places which the prosecuting
5 attorney intends to use in the hearing or trial or
6 which were obtained from or belong to the accused,

7 f. any record of prior criminal convictions of the
8 defendant, or of any codefendant, and

9 g. Oklahoma State Bureau of Investigation (OSBI) rap
10 sheet/records check on any witness listed by the state
11 or the defense as a witness who will testify at trial,
12 as well as any convictions of any witness revealed
13 through additional record checks if the defense has
14 furnished social security numbers or date of birth for
15 their witnesses, except OSBI rap sheet/record checks
16 shall not provide date of birth, social security
17 number, home phone number or address.

18 2. The state shall provide the defendant any evidence favorable
19 to the defendant if such evidence is material to either guilt or
20 punishment.

21 3. The prosecuting attorney's obligations under this standard
22 extend to:

23 a. material and information in the possession or control
24 of members of the prosecutor's staff,

1 b. any information in the possession of law enforcement
2 agencies that regularly report to the prosecutor of
3 which the prosecutor should reasonably know, and

4 c. any information in the possession of law enforcement
5 agencies who have reported to the prosecutor with
6 reference to the particular case of which the
7 prosecutor should reasonably know.

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

11 (1) the complete criminal history of such informant,
12 including any dismissed charges,

13 (2) any deal, promise, inducement or benefit that the
14 state or law enforcement agency has made or may
15 make in the future to the jailhouse informant in
16 connection with the testimony of such informant,

17 (3) the specific statements or recordings made by the
18 suspect or defendant and the time, place and
19 manner of the disclosure to the jailhouse
20 informant,

21 (4) all other **filed** cases in which the state intended
22 to introduce the testimony of the jailhouse
23 informant in connection with a deal, promise,
24 inducement or benefit, the nature of the deal,

1 promise, inducement or benefit, and whether the
2 testimony was admitted in the case,

3 (5) whether at any time the jailhouse informant
4 recanted the testimony or statement, and if so, a
5 transcript or copy of such recantation, if any,
6 and

7 (6) any other information relevant to the credibility
8 of the informant.

9 b. Each district attorney's office shall maintain a
10 central record that tracks each case in which the
11 state intended to introduce the testimony of the
12 jailhouse informant against a suspect or defendant in
13 connection with a deal, promise, inducement or
14 benefit, the nature of the deal, promise, inducement
15 or benefit and whether such testimony or statements
16 were admitted in the case. Such record shall be sent
17 to the Administrative Office of the Courts which shall
18 maintain a statewide record of such information.
19 Records maintained pursuant to this paragraph shall
20 only be accessible to prosecutors and shall not be
21 subject to the Oklahoma Open Records Act.

22 c. For purposes of this paragraph, "jailhouse informant"
23 means a person who provides, or who the prosecutor
24 intends to provide, testimony about admissions or

1 other relevant information made to him or her by the
2 suspect or defendant while both persons were detained
3 or incarcerated in a penal institution.

4 B. Disclosure of Evidence by the Defendant.

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

- 7 a. the names and addresses of witnesses which the defense
8 intends to call at trial, together with their
9 relevant, written or recorded statement, if any, or if
10 none, significant summaries of any oral statement,
11 b. the name and address of any witness, other than the
12 defendant, who will be called to show that the
13 defendant was not present at the time and place
14 specified in the information or indictment, together
15 with the witness' statement to that fact,
16 c. the names and addresses of any witness the defendant
17 will call, other than himself, for testimony relating
18 to any mental disease, mental defect, or other
19 condition bearing upon his mental state at the time
20 the offense was allegedly committed, together with the
21 witness' statement of that fact, if the statement is
22 redacted by the court to preclude disclosure of
23 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 Motions for discovery may be made at the time of the district
9 court arraignment or thereafter; provided that requests for police
10 reports may be made subject to the provisions of Section 258 of this
11 title. However, a request pursuant to Section 258 of this title
12 shall be subject to the discretion of the district attorney. All
13 issues relating to discovery, except as otherwise provided, will be
14 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 E. Regulation of Discovery.

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

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

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

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

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

23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
24 February 11, 2020 - DO PASS AS AMENDED