

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 HOUSE BILL 3777

 By: Duel and **Davis**

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6
7 AS INTRODUCED

8 An Act relating to criminal procedure; specifying
9 requirements for issuing criminal subpoenas;
10 requiring witnesses to attend trials or hearings upon
11 service of subpoenas; allowing court clerks and
12 attorneys to issue subpoenas; directing issuers of
13 subpoenas to avoid imposing undue burden or expense
14 on persons subject to subpoenas; requiring courts to
15 enforce said duty; providing for sanctions; allowing
16 courts to quash or modify subpoenas under certain
17 circumstances; declaring subpoenas separate and
18 distinct from certain rights or obligations; amending
19 22 O.S. 2021, Sections 708, 710, 712, 715 and 716,
20 which relate to the service and issuance of
21 subpoenas; updating statutory references and form
22 requirements; providing guidelines and requirements
23 for issuing subpoenas requesting the production of
24 documents or inspection of premises; allowing for the
 nonappearance of persons unless commanded to appear;
 authorizing service of written objections to
 subpoenas; establishing time period for submitting
 written objections; providing procedures for serving
 written objections; allowing parties to move for
 orders to compel production; providing requirements
 for producing documents; providing guidelines for
 claims of privilege or protection of trial
 preparation materials; clarifying processes for
 serving subpoenas in person and by mail; modifying
 exemption to subpoena requirement for court clerks;
 clarifying criminal contempt penalty provision;
 providing for codification; and providing an
 effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 707.1 of Title 22, unless there
4 is created a duplication in numbering, reads as follows:

5 A. Every subpoena issued on behalf of or by a defendant shall:

6 1. State the name of the court from which it is issued and the
7 title of the action; and

8 2. Command each person to whom it is directed to attend and
9 give testimony or to produce and permit inspection, copying, testing
10 or sampling of designated books, documents, electronically stored
11 information or tangible things in the possession, custody or control
12 of that person, or to permit inspection of premises, at a time and
13 place therein specified. A subpoena may specify the form or forms
14 in which electronically stored information is to be produced.

15 B. A witness shall be obligated upon service of a subpoena to
16 attend a trial or hearing at any place within the state and to
17 produce or allow inspection of documents at a location that is
18 specified in the subpoena.

19 C. The court clerk shall issue a subpoena, or a subpoena for
20 the production of documentary evidence, signed and sealed but
21 otherwise in blank, to a party requesting it, who shall complete the
22 subpoena before service. As an officer of the court, an attorney
23 authorized to practice law in this state may also issue and sign a
24 subpoena on behalf of a court in this state.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 707.2 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A party or an attorney responsible for the issuance and service
5 of a subpoena shall take reasonable steps to avoid imposing undue
6 burden or expense on a person subject to that subpoena. The court
7 on behalf of which the subpoena was issued shall enforce this duty
8 and impose upon the party or attorney, or both, in breach of this
9 duty an appropriate sanction, which may include, but is not limited
10 to, lost earnings and a reasonable attorney fee.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 707.3 of Title 22, unless there
13 is created a duplication in numbering, reads as follows:

14 A. On timely motion, the court by which a subpoena was issued
15 shall quash or modify the subpoena if it:

16 1. Fails to allow reasonable time for compliance;

17 2. Requires a person to travel to a place beyond the limits of
18 the county where the person resides or is served with the subpoena;

19 3. Requires disclosure of privileged or other protected matter
20 and no exception or waiver applies;

21 4. Subjects a person to undue burden; or

22 5. Requires production of books, papers, documents, or tangible
23 things that fall outside the scope of discovery permitted by Section
24 3226 of Title 12 of the Oklahoma Statutes.

1 B. If a subpoena:

2 1. Requires disclosure of a trade secret or other confidential
3 research, development, or commercial information; or

4 2. Requires disclosure of the opinion of an unretained expert
5 or information not describing specific events or occurrences in
6 dispute and resulting from the study by the expert made not at the
7 request of any party, the court may, to protect a person subject to
8 or affected by the subpoena, quash or modify the subpoena. However,
9 if the party in whose behalf the subpoena is issued shows a
10 substantial need for the testimony or material that cannot be
11 otherwise met without undue hardship and assures that the person to
12 whom the subpoena is addressed will be reasonably compensated, the
13 court may order appearance or production only upon specified
14 conditions.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 707.4 of Title 22, unless there
17 is created a duplication in numbering, reads as follows:

18 Subpoenas issued in accordance with the provisions of Sections
19 707.1 through 707.3, 708, 710 and 712 of Title 22 of the Oklahoma
20 Statutes shall be considered separate and distinct from any right or
21 obligation provided for in Section 2002 of Title 22 of the Oklahoma
22 Statutes.

23 SECTION 5. AMENDATORY 22 O.S. 2021, Section 708, is
24 amended to read as follows:

1 Section 708. A subpoena, authorized by the ~~last four sections~~
2 provisions of Sections 704, 705, 706, 707, and 707.1 of this title,
3 must be substantially in the following form:

4 IN THE NAME OF THE STATE OF
5 OKLAHOMA.

6 To ,

7 Greeting: You are commanded to appear before C. D., a justice
8 of the peace of at (or the grand jury of the ~~county~~
9 County of or the district court of ~~county~~
10 County, or other location as ~~the case~~ may be specified), on the
11 (stating day and hour), and remain in attendance on and
12 call of said from day to day and term to term until
13 lawfully discharged, as a witness in a criminal action prosecuted by
14 the State of Oklahoma against E. F. (or to testify as the case may
15 be).

16 SECTION 6. AMENDATORY 22 O.S. 2021, Section 710, is
17 amended to read as follows:

18 Section 710. A. If the books, papers or documents be required,
19 a direction to the following effect must be continued in the
20 subpoena:

21 And you are required also to bring with you the following:
22 (Describe intelligently the books, papers or documents required).

23 B. A copy of any subpoena that commands production of documents
24 and things or inspection of premises before trial shall be served on

1 each party in the manner prescribed by subsection B of Section 2005
2 of Title 12 of the Oklahoma Statutes. If the subpoena commands
3 production of documents and things or inspection of premises from a
4 nonparty before trial but does not require attendance of a witness,
5 the subpoena shall specify a date and location for the production or
6 inspection that is at least seven (7) days after the date that the
7 subpoena and copies of the subpoena are served on the witness and
8 all parties, and the subpoena shall include the following language:
9 "In order to allow objections to the production of documents and
10 things to be filed, you should not produce them until the date
11 specified in this subpoena, and if an objection is filed, until the
12 court rules on the objection."

13 C. A person commanded to produce and permit inspection,
14 copying, testing or sampling of designated books, papers, documents,
15 electronically stored information or tangible things, or inspection
16 of premises need not appear in person at the place of production or
17 inspection unless commanded to appear for deposition, hearing, or
18 trial.

19 D. Subject to subsection F of this section, a person commanded
20 to produce and permit inspection, copying, testing or sampling, or
21 any party may, within fourteen (14) days after service of the
22 subpoena or before the time specified for compliance if such time is
23 less than fourteen (14) days after service, serve written objection
24 to inspection, copying, testing, or sampling of any or all of the

1 designated materials or of the premises, or to producing
2 electronically stored information in the form or forms requested.
3 An objection that all or a portion of the requested material will or
4 should be withheld on a claim that it is privileged or subject to
5 protection as trial preparation materials shall be made within this
6 time period and in accordance with subsections E and F of this
7 section. If the objection is made by the witness, the witness shall
8 serve the objection on all parties; if objection is made by a party,
9 the party shall serve the objection on the witness and all other
10 parties. If objection is made, the party serving the subpoena shall
11 not be entitled to inspect, copy, test, or sample the materials or
12 inspect the premises except pursuant to an order of the court by
13 which the subpoena was issued. For failure to object in a timely
14 fashion, the court may assess reasonable costs and attorney fees or
15 take any other action it deems proper; however, a privilege or the
16 protection for trial preparation materials shall not be waived
17 solely for a failure to timely object under this section. If
18 objection has been made, the party serving the subpoena may, upon
19 notice to the person commanded to produce, move at any time for an
20 order to compel the production. Such an order to compel production
21 shall protect any person who is not a party or an officer of a party
22 from significant expense resulting from the inspection and copying
23 commanded.

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1 E. 1. A person responding to a subpoena to produce documents
2 shall produce them as they are kept in the usual course of business
3 or shall organize and label them to correspond with the categories
4 in the demand.

5 2. If a subpoena does not specify the form or forms for
6 producing electronically stored information, a person responding to
7 a subpoena shall produce the information in a form or forms in which
8 the person ordinarily maintains it or in a form or forms that are
9 reasonably usable.

10 3. A person responding to a subpoena is not required to produce
11 the same electronically stored information in more than one form.

12 4. A person responding to a subpoena is not required to provide
13 discovery of electronically stored information from sources that the
14 person identifies as not reasonably accessible because of undue
15 burden or cost. If such showing is made, the court may order
16 discovery from such sources if the requesting party shows good
17 cause, considering the limitations of subparagraph c of paragraph 2
18 of subsection B of Section 3226 of Title 12 of the Oklahoma
19 Statutes. The court may specify conditions for the discovery.

20 F. 1. When information subject to a subpoena is withheld on a
21 claim that it is privileged or subject to protection as trial
22 preparation materials, the claim shall be made expressly and shall
23 be supported by a description of the nature of the documents,
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1 communications, or things not produced that is sufficient to enable
2 the demanding party to contest the claim.

3 2. If information is produced in response to a subpoena that is
4 subject to a claim or privilege or of protection as trial
5 preparation material, the person making the claim may notify any
6 party that received the information of the claim and the basis for
7 such claim. After being notified, a party shall promptly return,
8 sequester, or destroy the specified information and any copies the
9 party has and may not use or disclose the information until the
10 claim is resolved. A receiving party may promptly present the
11 information to the court under seal for a determination of the
12 claim. If the receiving party disclosed the information before
13 being notified, such party shall take reasonable steps to retrieve
14 the information. The person who produced the information shall
15 preserve the information until the claim is resolved. This
16 mechanism is procedural only and does not alter the standards
17 governing whether the information is privileged or subject to
18 protection as trial preparation material or whether such privilege
19 or protection has been waived.

20 SECTION 7. AMENDATORY 22 O.S. 2021, Section 712, is
21 amended to read as follows:

22 Section 712. A. Service of ~~subpoenas for witnesses in criminal~~
23 ~~actions in the district courts of this state~~ a subpoena upon a
24 person named therein shall be made ~~in the same manner as in civil~~

1 ~~actions pursuant to Section 2004.1 of Title 12 of the Oklahoma~~
2 ~~Statutes by delivering or mailing a copy thereof to such person and,~~
3 ~~if the attendance of the person is demanded, by tendering to that~~
4 ~~person the fees for one (1) day of attendance and the mileage~~
5 ~~allowed by law. Service of a subpoena may be accomplished by any~~
6 ~~person who is eighteen (18) years of age or older.~~

7 B. Service of a subpoena by mail may be accomplished by mailing
8 a copy thereof by certified mail with return receipt requested and
9 delivery restricted to the person named in the subpoena. The person
10 serving the subpoena shall make proof of service thereof to the
11 court promptly, and in any event, before the witness is required to
12 testify at the hearing or trial. If service is made by a person
13 other than a peace officer, such person shall make affidavit
14 thereof. If service is by mail, the person serving the subpoena
15 shall show in the proof of service the date and place of mailing and
16 attach a copy of the return receipt showing that the mailing was
17 accepted. Failure to make proof of service does not affect the
18 validity of the service, but service of a subpoena by mail shall not
19 be effective if the mailing was not accepted by the person named in
20 the subpoena. The ~~cost~~ costs of service of ~~subpoenas~~ shall be borne
21 by the parties unless otherwise ordered by the court allowed whether
22 service is made by a peace officer or any other person.

23 SECTION 8. AMENDATORY 22 O.S. 2021, Section 715, is
24 amended to read as follows:

1 Section 715. A. No person is obliged to attend as a witness
2 before a court or magistrate outside the county where the witness
3 resides or is served with a subpoena, unless the judge of the court
4 in which the offense is triable, upon an affidavit of the district
5 attorney, or of the defendant or the defendant's counsel, stating
6 that he or she believes that the evidence and attendance of the
7 witness is material and necessary, shall endorse on the subpoena an
8 order for the attendance of the witness.

9 B. The court clerks of this state shall not be subject to
10 subpoena in matters relating to court records unless the court makes
11 a specific finding that the appearance and testimony of the court
12 clerk are both material and necessary because of a written objection
13 to the introduction of ~~certified documents~~ court records made by the
14 defendant or other party prior to trial.

15 SECTION 9. AMENDATORY 22 O.S. 2021, Section 716, is
16 amended to read as follows:

17 Section 716. Disobedience or failure by any person without
18 adequate excuse to obey a subpoena served upon himself or herself,
19 or a refusal to be sworn or to testify, may be ~~punished by the court~~
20 ~~or magistrate, as for~~ deemed a criminal contempt, ~~in the manner~~
21 ~~provided in civil procedure~~ of the court from which the subpoena was
22 issued.

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SECTION 10. This act shall become effective November 1, 2024.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
02/12/2024 - DO PASS, As Coauthored.