

1 **SENATE FLOOR VERSION**

2 April 9, 2024

3 ENGROSSED HOUSE
4 BILL NO. 3777

By: Duel, Davis, and Lowe
(Jason) of the House

5 and

6 Howard of the Senate

7
8
9 An Act relating to criminal procedure; specifying
10 requirements for issuing criminal subpoenas;
11 requiring witnesses to attend trials or hearings upon
12 service of subpoenas; allowing court clerks and
13 attorneys to issue subpoenas; directing issuers of
14 subpoenas to avoid imposing undue burden or expense
15 on persons subject to subpoenas; requiring courts to
16 enforce said duty; providing for sanctions; allowing
17 courts to quash or modify subpoenas under certain
18 circumstances; declaring subpoenas separate and
19 distinct from certain rights or obligations; amending
20 22 O.S. 2021, Sections 708, 710, 712, 715 and 716,
21 which relate to the service and issuance of
22 subpoenas; updating statutory references and form
23 requirements; providing guidelines and requirements
24 for issuing subpoenas requesting the production of
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.

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

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

A. A subpoena issued on behalf of or by a defendant to a law enforcement agency may command the production of the following law enforcement records:

1. Body camera videos;
2. Vehicle mounted camera videos;
3. Traffic camera videos; and
4. Law enforcement incident reports.

B. A law enforcement agency may charge a record copying fee of not more than One Dollar (\$1.00) per page and a video copying fee of not more than Fifty Dollars (\$50.00) per video when complying with the requests of the subpoena.

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

A. Every subpoena issued on behalf of or by a defendant shall state the name of the court from which it is issued and the title of the action.

1 B. A witness shall be obligated upon service of a subpoena to
2 attend a trial or hearing at any place within the state.

3 C. The court clerk shall issue a subpoena, or a subpoena for
4 the production of documentary evidence, signed and sealed but
5 otherwise in blank, to a party requesting it, who shall complete the
6 subpoena before service. As an officer of the court, an attorney
7 authorized to practice law in this state may also issue and sign a
8 subpoena on behalf of a court in this state.

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

12 A party or an attorney responsible for the issuance and service
13 of a subpoena shall take reasonable steps to avoid imposing undue
14 burden or expense on a person subject to that subpoena. The court
15 on behalf of which the subpoena was issued shall enforce this duty
16 and impose upon the party or attorney, or both, in breach of this
17 duty an appropriate sanction, which may include, but is not limited
18 to, lost earnings and a reasonable attorney fee.

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

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

24 1. Fails to allow reasonable time for compliance;

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

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

5 4. Subjects a person to undue burden; or

6 5. Requires production of books, papers, documents, or tangible
7 things that fall outside the scope of discovery permitted by Section
8 3226 of Title 12 of the Oklahoma Statutes.

9 B. If a subpoena:

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

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

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 707.5 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 Subpoenas issued in accordance with the provisions of Sections
5 707.1 through 707.3, 708, 710 and 712 of Title 22 of the Oklahoma
6 Statutes shall be considered separate and distinct from any right or
7 obligation provided for in Section 2002 of Title 22 of the Oklahoma
8 Statutes.

9 SECTION 6. AMENDATORY 22 O.S. 2021, Section 708, is
10 amended to read as follows:

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

14 IN THE NAME OF THE STATE OF
15 OKLAHOMA.

16 To ,

17 Greeting: You are commanded to appear before C. D., a justice
18 of the peace of at (or the grand jury of the ~~county~~
19 County of or the district court of ~~county~~
20 County, or other location as ~~the case~~ may be specified), on the
21 (stating day and hour), and remain in attendance on and
22 call of said from day to day and term to term until
23 lawfully discharged, as a witness in a criminal action prosecuted by
24

1 the State of Oklahoma against E. F. (or to testify as the case may
2 be).

3 SECTION 7. AMENDATORY 22 O.S. 2021, Section 710, is
4 amended to read as follows:

5 Section 710. A. If the books, papers or documents be required,
6 a direction to the following effect must be continued in the
7 subpoena:

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

10 B. A copy of any subpoena that commands production of documents
11 and things or inspection of premises before trial shall be served on
12 each party in the manner prescribed by subsection B of Section 2005
13 of Title 12 of the Oklahoma Statutes. If the subpoena commands
14 production of documents and things or inspection of premises from a
15 nonparty before trial but does not require attendance of a witness,
16 the subpoena shall specify a date and location for the production or
17 inspection that is at least seven (7) days after the date that the
18 subpoena and copies of the subpoena are served on the witness and
19 all parties, and the subpoena shall include the following language:
20 "In order to allow objections to the production of documents and
21 things to be filed, you should not produce them until the date
22 specified in this subpoena, and if an objection is filed, until the
23 court rules on the objection."
24

1 C. A person commanded to produce and permit inspection,
2 copying, testing or sampling of designated books, papers, documents,
3 electronically stored information or tangible things, or inspection
4 of premises need not appear in person at the place of production or
5 inspection unless commanded to appear for deposition, hearing, or
6 trial.

7 D. Subject to subsection F of this section, a person commanded
8 to produce and permit inspection, copying, testing or sampling, or
9 any party may, within fourteen (14) days after service of the
10 subpoena or before the time specified for compliance if such time is
11 less than fourteen (14) days after service, serve written objection
12 to inspection, copying, testing, or sampling of any or all of the
13 designated materials or of the premises, or to producing
14 electronically stored information in the form or forms requested.
15 An objection that all or a portion of the requested material will or
16 should be withheld on a claim that it is privileged or subject to
17 protection as trial preparation materials shall be made within this
18 time period and in accordance with subsections E and F of this
19 section. If the objection is made by the witness, the witness shall
20 serve the objection on all parties; if objection is made by a party,
21 the party shall serve the objection on the witness and all other
22 parties. If objection is made, the party serving the subpoena shall
23 not be entitled to inspect, copy, test, or sample the materials or
24 inspect the premises except pursuant to an order of the court by

1 which the subpoena was issued. For failure to object in a timely
2 fashion, the court may assess reasonable costs and attorney fees or
3 take any other action it deems proper; however, a privilege or the
4 protection for trial preparation materials shall not be waived
5 solely for a failure to timely object under this section. If
6 objection has been made, the party serving the subpoena may, upon
7 notice to the person commanded to produce, move at any time for an
8 order to compel the production. Such an order to compel production
9 shall protect any person who is not a party or an officer of a party
10 from significant expense resulting from the inspection and copying
11 commanded.

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

16 2. If a subpoena does not specify the form or forms for
17 producing electronically stored information, a person responding to
18 a subpoena shall produce the information in a form or forms in which
19 the person ordinarily maintains it or in a form or forms that are
20 reasonably usable.

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

23 4. A person responding to a subpoena is not required to provide
24 discovery of electronically stored information from sources that the

1 person identifies as not reasonably accessible because of undue
2 burden or cost. If such showing is made, the court may order
3 discovery from such sources if the requesting party shows good
4 cause, considering the limitations of subparagraph c of paragraph 2
5 of subsection B of Section 3226 of Title 12 of the Oklahoma
6 Statutes. The court may specify conditions for the discovery.

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

13 2. If information is produced in response to a subpoena that is
14 subject to a claim or privilege or of protection as trial
15 preparation material, the person making the claim may notify any
16 party that received the information of the claim and the basis for
17 such claim. After being notified, a party shall promptly return,
18 sequester, or destroy the specified information and any copies the
19 party has and may not use or disclose the information until the
20 claim is resolved. A receiving party may promptly present the
21 information to the court under seal for a determination of the
22 claim. If the receiving party disclosed the information before
23 being notified, such party shall take reasonable steps to retrieve
24 the information. The person who produced the information shall

1 preserve the information until the claim is resolved. This
2 mechanism is procedural only and does not alter the standards
3 governing whether the information is privileged or subject to
4 protection as trial preparation material or whether such privilege
5 or protection has been waived.

6 SECTION 8. AMENDATORY 22 O.S. 2021, Section 712, is
7 amended to read as follows:

8 Section 712. A. ~~Service of subpoenas for witnesses in criminal~~
9 ~~actions in the district courts of this state~~ a subpoena upon a
10 person named therein shall be made in the same manner as in civil
11 actions pursuant to Section 2004.1 of Title 12 of the Oklahoma
12 Statutes by delivering or mailing a copy thereof to such person and,
13 if the attendance of the person is demanded, by tendering to that
14 person the fees for one (1) day of attendance and the mileage
15 allowed by law. Service of a subpoena may be accomplished by any
16 person who is eighteen (18) years of age or older.

17 B. Service of a subpoena by mail may be accomplished by mailing
18 a copy thereof by certified mail with return receipt requested and
19 delivery restricted to the person named in the subpoena. The person
20 serving the subpoena shall make proof of service thereof to the
21 court promptly, and in any event, before the witness is required to
22 testify at the hearing or trial. If service is made by a person
23 other than a peace officer, such person shall make affidavit
24 thereof. If service is by mail, the person serving the subpoena

1 shall show in the proof of service the date and place of mailing and
2 attach a copy of the return receipt showing that the mailing was
3 accepted. Failure to make proof of service does not affect the
4 validity of the service, but service of a subpoena by mail shall not
5 be effective if the mailing was not accepted by the person named in
6 the subpoena. The ~~cost~~ costs of service ~~of subpoenas~~ shall be borne
7 ~~by the parties unless otherwise ordered by the court~~ allowed whether
8 service is made by a peace officer or any other person.

9 SECTION 9. AMENDATORY 22 O.S. 2021, Section 715, is
10 amended to read as follows:

11 Section 715. A. No person is obliged to attend as a witness
12 before a court or magistrate outside the county where the witness
13 resides or is served with a subpoena, unless the judge of the court
14 in which the offense is triable, upon an affidavit of the district
15 attorney, or of the defendant or the defendant's counsel, stating
16 that he or she believes that the evidence and attendance of the
17 witness is material and necessary, shall endorse on the subpoena an
18 order for the attendance of the witness.

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

1 SECTION 10. AMENDATORY 22 O.S. 2021, Section 716, is
2 amended to read as follows:

3 Section 716. Disobedience or failure by any person without
4 adequate excuse to obey a subpoena served upon himself or herself,
5 or a refusal to be sworn or to testify, may be ~~punished by the court~~
6 ~~or magistrate, as for deemed a criminal contempt, in the manner~~
7 ~~provided in civil procedure~~ of the court from which the subpoena was
8 issued.

9 SECTION 11. This act shall become effective November 1, 2024.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
11 April 9, 2024 - DO PASS
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