An Act

ENROLLED SENATE
BILL NO. 1385

By: Daniels of the Senate

and

Kannady of the House

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

SUBJECT: Informant testimony

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

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

Section 2510. A. The United States, state or subdivision thereof has a privilege to refuse to disclose the identity of a 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.

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

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

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

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

3. If information from an ~~informer~~ informant is relied upon to establish the legality of the means by which evidence was obtained and the court or the defendant is not satisfied that the information was received from an ~~informer~~ informant reasonably believed to be reliable or credible, the court or defendant may require the identity of the ~~informer~~ informant to be disclosed. The court shall, on request of the government, direct that the disclosure be made in chambers. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of a proceeding under this subsection except a disclosure in chambers if the court determines that no counsel or party shall be permitted to be present. If disclosure of the identity of the ~~informer~~ informant is made in chambers, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

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

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

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

a. the names and addresses of witnesses which the state intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,

b. law enforcement reports made in connection with the particular case,

c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant,

d. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons,

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

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

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

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

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

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

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

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

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

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

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

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

(4) all other filed cases in which the state intended to introduce the testimony of the jailhouse informant in connection with a deal, promise, inducement or benefit, the nature of the deal, promise, inducement or benefit, and whether the testimony was admitted in the case,

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

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

b. Each district attorney's office shall maintain a central record that tracks each case in which the state intended to introduce the testimony of the jailhouse informant against a suspect or defendant in connection with a deal, promise, inducement or benefit, the nature of the deal, promise, inducement or benefit and whether such testimony or statements were admitted in the case. Such record shall be sent to the District Attorneys Council which shall maintain a statewide record of such information. Records maintained pursuant to this paragraph shall only be accessible to prosecutors and shall not be subject to the Oklahoma Open Records Act. By September 15 of each year, the District Attorneys Council shall publish an annual report of aggregate, de-identified data regarding the total number of cases tracked pursuant to this section, and the number of cases added during the previous fiscal year pursuant to this section by each district attorney's office. A copy of the report shall be distributed to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the chairs of the Senate and House Judiciary Committees.

c. For purposes of this paragraph, "jailhouse informant" means a person who provides, or who the prosecutor intends to provide, testimony about admissions or other relevant information made to him or her by the suspect or defendant while both persons were detained or incarcerated in a penal institution.

B. Disclosure of Evidence by the Defendant.

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

a. the names and addresses of witnesses which the defense intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,

b. the name and address of any witness, other than the defendant, who will be called to show that the defendant was not present at the time and place specified in the information or indictment, together with the witness' statement to that fact,

c. the names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other condition bearing upon his mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, if the statement is redacted by the court to preclude disclosure of privileged communication.

2. A statement filed under subparagraph a, b or c of paragraph 1 of subsection A or B of this section is not admissible in evidence at trial. Information obtained as a result of a statement filed under subsection A or B of this section is not admissible in evidence at trial except to refute the testimony of a witness whose identity subsection A of this section requires to be disclosed.

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

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

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

C. Continuing Duty to Disclose.

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

D. Time of Discovery.

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

E. Regulation of Discovery.

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

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

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

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

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

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

Passed the Senate the 19th day of February, 2020.

Stephanie L Bice
Presiding Officer of the Senate

Passed the House of Representatives the 14th day of May, 2020.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 14th

day of May, 20 20, at 5:31 o'clock p. M.

By: Sumer Curry

Approved by the Governor of the State of Oklahoma this 20th

day of May, 20 20, at 9:32 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 20

day of May, 20 20, at 11:07 o'clock a M.

By: Nicole Rogers