

§ 2002. Disclosure of evidence--Continuing duty to..., OK ST T. 22 § 2002



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Proposed Legislation

Oklahoma Statutes Annotated
Title 22. Criminal Procedure (Refs & Annos)
Chapter 32. Oklahoma Criminal Discovery Code

22 Okl.St. Ann. § 2002

§ 2002. **Disclosure of evidence**--Continuing duty to disclose--Time of discovery--
Regulation of discovery--Reasonable cost of copying, duplicating, and videotaping

Effective: November 1, 2020

[Currentness](#)

A. **Disclosure** of **Evidence** by the **State**.

1. Upon request of the defense, the **state** shall 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.

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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

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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.¹ 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

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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.

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Credits

Laws 1994, c. 292, § 2, eff. Sept. 1, 1994; Laws 1996, c. 304, § 4, emerg. eff. June 10, 1996; Laws 1998, c. 155, § 1, eff. Nov. 1, 1998; Laws 2002, c. 460, § 23, eff. Nov. 1, 2002; Laws 2020, c. 97, § 2, eff. Nov. 1, 2020.

Footnotes

1 Title 51, § 24A.1, et seq.

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Current with enacted legislation of the Second Regular Session of the 57th Legislature (2020)

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