

Amend **HB 969** (engrossed version) by striking SECTIONS 1, 2, and 3 of the bill (page 1, line 4, through page 2, line 13) and substituting the following:

SECTION 1. Article 39.14, Code of Criminal Procedure, is amended to read as follows:

Art. 39.14. DISCOVERY

Sec. 1. DISCLOSURE BY STATE. (a) As soon as practicable after receiving a timely request from the defendant, the attorney representing the state shall disclose to the defendant or the defendant's counsel and permit inspection, photocopying, or photographing of the following materials and information in the possession, custody, or control of the state or any of its agencies:

(1) any exculpatory or impeachment evidence material to the defendant's guilt or punishment;

(2) any written or recorded statements that are made by the defendant or by any witness the attorney representing the state intends to call at the trial and that are related to the case charged, including offense reports by law enforcement personnel and grand jury testimony, if any;

(3) any written record containing the substance of any oral statement that is made by the defendant and that is related to the case charged, whether made before or after the defendant's arrest, in response to interrogation by any person whom the defendant believed to be a peace officer;

(4) the defendant's prior criminal record;

(5) any record of a criminal conviction admissible for impeachment under Rule 609, Texas Rules of Evidence, of a witness the attorney representing the state intends to call at the trial;

(6) any affidavit, warrant, or return pertaining to a search or seizure in connection with the case;

(7) any real evidence that was obtained from or that belongs to the defendant or that the attorney representing the state intends to use at the trial and, on a showing of materiality by the defendant, the opportunity to test that evidence;

(8) the names and addresses of all witnesses the attorney representing the state intends to call at the trial, including those called to present evidence under Rules 702, 703,

and 705, Texas Rules of Evidence;

(9) any report produced by or for an expert witness the attorney representing the state intends to call at the trial; and

(10) any plea agreement, grant of immunity, or other agreement for testimony issued by the attorney representing the state in connection with the case [~~Upon motion of the defendant showing good cause therefor and upon notice to the other parties, the court in which an action is pending may order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State].~~

(b) If the defendant gives notice of a defense under Section 2(b), the attorney representing the state shall, not later than 10 days before the date the trial begins, disclose to the defendant or the defendant's counsel the names and addresses of the witnesses the state intends to use to rebut the defense or the testimony of any of the defendant's witnesses called to establish that defense [~~On motion of a party and on notice to the other parties, the court in which an action is pending may order one or more of the other parties to disclose to the party making the motion the name and address of each person the other party may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence.~~

~~The court shall specify in the order the time and manner in which the other party must make the disclosure to the moving party, but in specifying the time in which the other party shall make disclosure the court shall require the other party to make the disclosure not later than the 20th day before the date the trial begins].~~

(c) This article does not authorize the removal of physical evidence from the possession of the state, and any inspection of physical evidence shall be conducted in the presence of a representative of the state.

Sec. 2. DISCLOSURE BY DEFENDANT. (a) As soon as practicable after receiving the initial disclosure under Section 1 from the attorney representing the state, the defendant shall disclose to the attorney representing the state and permit inspection, photocopying, or photographing of the following materials and information:

(1) any relevant written or recorded statements by any witnesses, other than the defendant, the defendant intends to call at the trial;

(2) any record of a criminal conviction admissible for impeachment under Rule 609, Texas Rules of Evidence, of a witness, other than the defendant, the defendant intends to call at the trial if that information is known to the defendant;

(3) any real evidence that the defendant intends to use at the trial, and on a showing of materiality by the attorney representing the state, the opportunity to test that evidence;

(4) the names and addresses of all witnesses, other than the defendant, the defendant intends to call at the trial, including those called to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence; and

(5) any report produced by or for an expert witness the defendant intends to call at the trial.

(b) On a request by the state, a defendant planning to offer evidence of one or more defenses listed in Chapter 8 or 9, Penal Code, or evidence of an alibi defense, shall file a good faith notice of intent to raise the defense with the court and the attorney representing the state not later than the 30th day before the date the trial begins. If the defendant intends to raise an

alibi defense, the notice must include the place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to use to establish the alibi. Any notice provided under this subsection is for purposes of discovery only and is not admissible at trial unless the court finds that the contents of the notice were not made in good faith.

(c) After the filing of the indictment or information, the court may require the defendant to submit nontestimonial evidence to the state. This article does not limit any law enforcement or prosecuting agency from seeking or obtaining nontestimonial evidence to the extent permitted by law.

Sec. 3. EXCEPTIONS TO DISCLOSURE. (a) Neither the attorney representing the state nor the defendant is required to disclose materials or information that are:

(1) recorded proceedings of a grand jury, except as provided in Section 1(a)(2) of this article and Rule 615, Texas Rules of Evidence;

(2) a work product, including a report, memorandum, or other internal document, of the attorney representing the state, the defendant, or their investigators or other agents that is made in connection with the investigation, prosecution, or defense of the case; or

(3) privileged under an express statutory provision, the Texas Constitution, or the United States Constitution.

(b) This article does not authorize disclosure of the name, address, or telephone number of a victim in violation of the provisions of Chapter 57.

(c) A victim impact statement is subject to disclosure before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material.

Sec. 4. CONTINUING DUTY TO DISCLOSE. If, before a trial begins, but subsequent to compliance with this article or a relevant court order, a party discovers additional material or information subject to disclosure, the party shall immediately notify the other party or the other party's counsel of the existence of the additional material or information.

Sec. 5. EXCISION. (a) Except as provided by Subsection (b), if a portion of material or information is subject to discovery under this article and a portion is not subject to discovery, only the portion that is subject to discovery must be disclosed. The disclosing party shall inform the other party that the portion of material or information that is not subject to discovery has been excised and withheld. On request, the court shall conduct a hearing to determine whether the reasons for excision are justifiable. Material or information excised pursuant to judicial order shall be sealed and preserved in the records of the court and shall be made available to an appellate court in the event of an appeal.

(b) Excision of a witness statement produced in accordance with Rule 615, Texas Rules of Evidence, is governed by that rule.

Sec. 6. PROTECTIVE ORDERS. (a) On a showing of good cause, the court may at any time enter an appropriate protective order that a specified disclosure be denied, restricted, or deferred. "Good cause," for purposes of this section, includes threats, harm, intimidation, or possible danger to the safety of a victim or witness, possible loss, destruction, or fabrication of evidence, or possible compromise of other investigations by law enforcement or a defense offered by a defendant.

(b) If a protective order is granted concerning the personal information for a victim or witness, the party in possession of that information shall make the victim or witness available for an interview by the opposing party or their representative at a time, date, place, and manner specified by the court.

Sec. 7. IN CAMERA PROCEEDINGS. On request, the court may permit to be made in camera an excision hearing under Section 5(a), a showing of good cause for denial or regulation of a disclosure under Section 6, or any portion of a proceeding. A verbatim record shall be made of a proceeding in camera. If the court excises a portion of the material or information or enters an order granting relief following a showing of good cause, the entire record shall be sealed and preserved in the records of the court and shall be made available to an appellate court in the event of an appeal.

Sec. 8. CONFERENCE. On request of the attorney representing the state or the defendant, the court shall hold a

discovery hearing under Section 1(8), Article 28.01, not later than the 10th day before the date the trial begins, to verify compliance by each party with this article.

Sec. 9. COMPLIANCE; SANCTIONS. (a) The disclosures required under this article may be performed in any manner that is mutually agreeable to the attorney representing the state and the defendant or that is ordered by the court in accordance with this article. The order issued by the court must specify the time, place, and manner of making the required disclosures.

(b) On a showing that a party has not complied with this article or a relevant court order, the court may make any order the court finds necessary under the circumstances, including an order related to immediate disclosure, contempt proceedings, delay or prohibition of the testimony of a witness or the presentation of real evidence, or continuance of the matter. The court may also inform the jury of any failure or refusal to disclose or any untimely disclosure under this article.

(c) The court may prohibit the use of a defense or the presentation of a witness under Subsection (b) only if all other sanctions have been exhausted or the discovery violation amounts to wilful misconduct designed to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence. The court may not dismiss a charge under Subsection (b) unless required to do so by the Texas Constitution or the United States Constitution.

SECTION 2. Section 2, Article 46.03, Code of Criminal Procedure, is repealed.

SECTION 3. The change in law made by this Act applies to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 4. This Act takes effect September 1, 2005.