

By: Carona, West

S.B. No. 560

A BILL TO BE ENTITLED

AN ACT

relating to discovery in a criminal case.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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;

1           (4) the defendant's prior criminal record;

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

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

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

11           (8) the names and addresses of all witnesses the  
12 attorney representing the state intends to call at the trial,  
13 including those called to present evidence under Rules 702, 703,  
14 and 705, Texas Rules of Evidence;

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

17           (10) any plea agreement, grant of immunity, or other  
18 agreement for testimony issued by the attorney representing the  
19 state in connection with the case [~~Upon motion of the defendant~~  
20 ~~showing good cause therefor and upon notice to the other parties,~~  
21 ~~the court in which an action is pending may order the State before~~  
22 ~~or during trial of a criminal action therein pending or on trial to~~  
23 ~~produce and permit the inspection and copying or photographing by~~  
24 ~~or on behalf of the defendant of any designated documents, papers,~~  
25 ~~written statement of the defendant, (except written statements of~~  
26 ~~witnesses and except the work product of counsel in the case and~~  
27 ~~their investigators and their notes or report), books, accounts,~~

1 ~~letters, photographs, objects or tangible things not privileged,~~  
2 ~~which constitute or contain evidence material to any matter~~  
3 ~~involved in the action and which are in the possession, custody or~~  
4 ~~control of the State or any of its agencies. The order shall~~  
5 ~~specify the time, place and manner of making the inspection and~~  
6 ~~taking the copies and photographs of any of the aforementioned~~  
7 ~~documents or tangible evidence; provided, however, that the rights~~  
8 ~~herein granted shall not extend to written communications between~~  
9 ~~the State or any of its agents or representatives or employees.~~  
10 ~~Nothing in this Act shall authorize the removal of such evidence~~  
11 ~~from the possession of the State, and any inspection shall be in the~~  
12 ~~presence of a representative of the State].~~

13       (b) If the defendant gives notice of a defense under Section  
14 2(b), the attorney representing the state shall, not later than 10  
15 days before the date the trial begins, disclose to the defendant or  
16 the defendant's counsel the names and addresses of the witnesses  
17 the state intends to use to rebut the defense or the testimony of  
18 any of the defendant's witnesses called to establish that defense  
19 ~~[On motion of a party and on notice to the other parties, the court~~  
20 ~~in which an action is pending may order one or more of the other~~  
21 ~~parties to disclose to the party making the motion the name and~~  
22 ~~address of each person the other party may use at trial to present~~  
23 ~~evidence under Rules 702, 703, and 705, Texas Rules of Evidence.~~  
24 ~~The court shall specify in the order the time and manner in which~~  
25 ~~the other party must make the disclosure to the moving party, but in~~  
26 ~~specifying the time in which the other party shall make disclosure~~  
27 ~~the court shall require the other party to make the disclosure not~~

1 ~~later than the 20th day before the date the trial begins]~~.

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

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

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

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

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

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

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

1        (b) On a request by the state, a defendant planning to offer  
2 evidence of one or more defenses listed in Chapter 8 or 9, Penal  
3 Code, or evidence of an alibi defense, shall file a good faith  
4 notice of intent to raise the defense with the court and the  
5 attorney representing the state not later than the 30th day before  
6 the date the trial begins. If the defendant intends to raise an  
7 alibi defense, the notice must include the place at which the  
8 defendant claims to have been at the time of the alleged offense and  
9 the names and addresses of the witnesses the defendant intends to  
10 use to establish the alibi. Any notice provided under this  
11 subsection is for purposes of discovery only and is not admissible  
12 at trial unless the court finds that the contents of the notice were  
13 not made in good faith.

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

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

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

25                (2) a work product, including a report, memorandum, or  
26 other internal document, of the attorney representing the state,  
27 the defendant, or their investigators or other agents that is made

1 in connection with the investigation, prosecution, or defense of  
2 the case; or

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

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

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

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

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

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

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

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

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

25        Sec. 8. CONFERENCE. On request of the attorney  
26 representing the state or the defendant, the court shall hold a  
27 discovery hearing under Section 1(8), Article 28.01, not later than

1 the 10th day before the date the trial begins, to verify compliance  
2 by each party with this article.

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

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

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

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

27 SECTION 3. The change in law made by this Act applies to the



1 prosecution of an offense committed on or after the effective date  
2 of this Act. The prosecution of an offense committed before the  
3 effective date of this Act is covered by the law in effect when the  
4 offense was committed, and the former law is continued in effect for  
5 this purpose. For purposes of this section, an offense is committed  
6 before the effective date of this Act if any element of the offense  
7 occurs before the effective date.

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