

BILL ANALYSIS

C.S.H.B. 2988
By: Canales
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law states that the primary duty of all prosecuting attorneys is not to convict but to see that justice is done, and current law also prohibits prosecuting attorneys from suppressing facts or concealing witnesses capable of establishing the innocence of the accused. Interested parties contend that the lack of an expressed requirement for prosecuting attorneys to release information or evidence that tends to negate the defendant's guilt or mitigate the punishment for the offense fails to enact the intent of that law and that requiring the district attorney, county attorney, and attorney general to provide certain information and evidence to whomever is representing the accused will increase the fairness and integrity of criminal trials.

To address these concerns and ensure that defendants receive a fair trial, C.S.H.B. 2988 requires a prosecuting attorney to affirm in open court that the attorney was diligent in identifying any information or evidence that tends to negate the defendant's guilt or mitigate the punishment and has provided all such information and evidence to the defendant and the defendant's attorney.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2988 amends the Code of Criminal Procedure to prohibit a district attorney from suppressing evidence that would deprive a defendant of a fair trial, rather than from suppressing facts or secreting witnesses capable of establishing the innocence of the accused. The bill prohibits a county attorney and the attorney general from suppressing evidence that would deprive a defendant of a fair trial and imposes on a district attorney, county attorney, and the attorney general the duty to identify any information or evidence that tends to negate the defendant's guilt or mitigate the punishment for the offense and that is in the possession, custody, or control of the state.

C.S.H.B. 2988 requires a court, before accepting a plea of guilty or a plea of nolo contendere for an offense other than a misdemeanor punishable by fine only, to require the attorney representing the state to affirm in open court that the attorney has been diligent in identifying any information or evidence that tends to negate the defendant's guilt or mitigate the punishment for the offense and that is in the possession, custody, or control of the state and that the attorney provided all such information and evidence to the defendant and the defendant's attorney before reaching a plea agreement or responding to notice of a defendant's intent to enter a plea of guilty or a plea of nolo contendere. The bill establishes that the court's failure to comply with this requirement is not grounds for the defendant to set aside the conviction, sentence, or plea. The bill requires a court, before a trial is scheduled to commence for an offense other than a misdemeanor punishable by fine only, to require the attorney representing the state to make those affirmations in open court regardless of whether the defendant has made a motion to the court for the disclosure of certain evidentiary materials in the possession, custody, or control of the state or

any state agency.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2988 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 2.01, Code of Criminal Procedure, is amended to read as follows:

Art. 2.01. DUTIES OF DISTRICT ATTORNEYS. (a) Each district attorney shall represent the State in all criminal cases in the district courts of the [his] district and in appeals from those cases [therefrom], except in cases where the district attorney [he] has been, before [his] election, employed adversely. When any criminal proceeding is had before an examining court in the [his] district or before a judge upon habeas corpus, and the district attorney [he] is notified of the proceeding [same], and is at the time within the [his] district, the district attorney [he] shall represent the State in the proceeding [therein], unless prevented by other official duties.

(b) It is [shall be] the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. A district attorney may [They shall] not suppress evidence that would deprive a defendant of a fair trial. A district attorney has a duty to identify any exculpatory or impeachment evidence that is material to the defendant's guilt or punishment and in the possession of or otherwise known to any peace officer, investigator, or other individual involved in the investigation or prosecution of a case [facts or secrete witnesses capable of establishing the innocence of the accused].

SECTION 2. Article 2.02, Code of Criminal Procedure, is amended to read as follows:

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HOUSE COMMITTEE SUBSTITUTE

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SECTION 2. Article 2.02, Code of Criminal Procedure, is amended to read as follows:

Art. 2.02. DUTIES OF COUNTY ATTORNEYS. (a) The county attorney

shall attend the terms of court in the [his] county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in the [said] county; and in the absence of the district attorney, the county attorney [he] shall represent the State alone and, when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court. The county attorney [He] shall represent the State in cases the county attorney [he] has prosecuted that [which] are appealed.

(b) A county attorney may not suppress evidence that would deprive a defendant of a fair trial. A county attorney has a duty to identify any exculpatory or impeachment evidence that is material to the defendant's guilt or punishment and in the possession of or otherwise known to any peace officer, investigator, or other individual involved in the investigation or prosecution of a case.

SECTION 3. Article 2.021, Code of Criminal Procedure, is amended to read as follows:

Art. 2.021. DUTIES OF ATTORNEY GENERAL. (a) The attorney general may offer to a county or district attorney the assistance of the attorney general's office in the prosecution of an offense described by Article 60.051(g) the victim of which is younger than 17 years of age at the time the offense is committed. On request of a county or district attorney, the attorney general shall assist in the prosecution of an offense described by Article 60.051(g) the victim of which is younger than 17 years of age at the time the offense is committed. For purposes of this article, assistance includes investigative, technical, and litigation assistance of the attorney general's office.

(b) The attorney general may not suppress evidence that would deprive a defendant of a fair trial. The attorney general has a duty to identify any exculpatory or impeachment evidence that is material to the defendant's guilt or punishment and in the possession of or otherwise known to any peace officer, investigator, or other individual involved in the investigation or prosecution of a case.

shall attend the terms of court in the [his] county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in the [said] county; and in the absence of the district attorney, the county attorney [he] shall represent the State alone and, when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court. The county attorney [He] shall represent the State in cases the county attorney [he] has prosecuted that [which] are appealed.

(b) A county attorney may not suppress evidence that would deprive a defendant of a fair trial. A county attorney has a duty to identify any information or evidence that tends to negate the defendant's guilt or mitigate the punishment for the offense and that is in the possession, custody, or control of the State.

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(b) The attorney general may not suppress evidence that would deprive a defendant of a fair trial. The attorney general has a duty to identify any information or evidence that tends to negate the defendant's guilt or mitigate the punishment for the offense and that is in the possession, custody, or control of the State.

SECTION 4. Article 26.13, Code of Criminal Procedure, is amended by adding Subsection (e-1) and amending Subsection (f) to read as follows:

(e-1) Before accepting a plea of guilty or a plea of nolo contendere for an offense other than a misdemeanor punishable by fine only, the court shall require the attorney representing the state to affirm in open court that the attorney has:

(1) been diligent in identifying any exculpatory or impeachment evidence that is material to the defendant's guilt or punishment and in the possession of or otherwise known to any peace officer, investigator, or other individual involved in the investigation or prosecution of the case; and

(2) provided all evidence described by Subdivision (1) to the defendant and the defendant's attorney.

(f) The court must substantially comply with Subsections [Subsection] (e) and (e-1) [of this article]. The failure of the court to comply with either subsection [Subsection (e) of this article] is not grounds for the defendant to set aside the conviction, sentence, or plea.

SECTION 5. Chapter 28, Code of Criminal Procedure, is amended by adding Article 28.15 to read as follows:

Art. 28.15. STATEMENT REGARDING EXCULPATORY EVIDENCE REQUIRED. Notwithstanding any other law, not later than 30 days before a trial is scheduled to commence for an offense other than a misdemeanor punishable by fine only, the court shall require the attorney representing the state to affirm in open court that the attorney has:

(1) been diligent in identifying any exculpatory or impeachment evidence that is material to the defendant's guilt or punishment and in the possession of or otherwise known to any peace officer, investigator, or other individual involved in the investigation or prosecution of the case; and

(2) provided all evidence described by

SECTION 4. Article 26.13, Code of Criminal Procedure, is amended by adding Subsection (e-1) and amending Subsection (f) to read as follows:

(e-1) Before accepting a plea of guilty or a plea of nolo contendere for an offense other than a misdemeanor punishable by fine only, the court shall require the attorney representing the state to affirm in open court that the attorney has:

(1) been diligent in identifying any information or evidence that tends to negate the defendant's guilt or mitigate the punishment for the offense and that is in the possession, custody, or control of the state; and

(2) provided all information and evidence described by Subdivision (1) to the defendant and the defendant's attorney before reaching a plea agreement or responding to notice of a defendant's intent to enter a plea of guilty or a plea of nolo contendere.

(f) The court must substantially comply with Subsections [Subsection] (e) and (e-1) [of this article]. The failure of the court to comply with either subsection [Subsection (e) of this article] is not grounds for the defendant to set aside the conviction, sentence, or plea.

SECTION 5. Chapter 28, Code of Criminal Procedure, is amended by adding Article 28.15 to read as follows:

Art. 28.15. STATEMENT REGARDING INFORMATION OR EVIDENCE FAVORABLE TO DEFENDANT. Notwithstanding any other law, before a trial is scheduled to commence for an offense other than a misdemeanor punishable by fine only, the court shall require the attorney representing the state to affirm in open court that the attorney has:

(1) been diligent in identifying any information or evidence that tends to negate the defendant's guilt or mitigate the punishment for the offense and that is in the possession, custody, or control of the state; and

(2) provided all information and evidence

Subdivision (1) to the defendant and the defendant's attorney, regardless of whether the defendant has made a motion under Article 39.14.

described by Subdivision (1) to the defendant and the defendant's attorney, regardless of whether the defendant has made a motion under Article 39.14.

SECTION 6. The changes in law made by this Act apply only to a criminal proceeding that commences on or after the effective date of this Act. A criminal proceeding that commences before the effective date of this Act is governed by the law in effect on the date the proceeding commences, and the former law is continued in effect for that purpose.

SECTION 6. Same as introduced version.

SECTION 7. This Act takes effect September 1, 2013.

SECTION 7. Same as introduced version.