

BILL ANALYSIS

S.B. 1611
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Criminal discovery, which involves the exchange of relevant information between prosecutors and the defense prior to trial, is considered a necessary element of a fair and just criminal justice system and is also required as part of a defendant's constitutional right to a full defense. Interested parties observe that a U.S. Supreme Court ruling requires prosecutors to turn over to the defense any evidence that is relevant to the defendant's case, but express concern that the ruling is vague and open to interpretation, resulting in different levels of discovery across different counties in Texas. The parties contend that such inconsistency demonstrates a need to change the state's criminal discovery laws to ensure uniformity throughout Texas.

Concerned parties cite several reasons why a uniform open file discovery process is important. The parties contend that it promotes efficiency in the criminal justice system and lessens the likelihood of discovery disputes, costly appeals, and wrongful convictions. Recent high profile cases in Texas suggest that open file discovery increases the likelihood that evidence relevant to a defendant's innocence will be revealed before the defendant is wrongfully convicted. Reducing the occurrence of appeals and wrongful convictions through the criminal discovery process could save the state substantial amounts of money.

S.B. 1611 amends current law relating to discovery in a criminal case in an effort to uphold a defendant's constitutional right to a defense, minimize the likelihood of wrongful convictions, save thousands in taxpayer dollars, promote an efficient justice system, and improve public safety, all while increasing the public's confidence in the criminal justice system.

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

S.B. 1611, to be known as the Michael Morton Act, amends the Code of Criminal Procedure to revise provisions relating to discovery in a criminal case. The bill removes statutory language requiring a court in which a criminal action is pending, on motion of the defendant showing good cause and after notice to other parties, to order the state to produce and permit the inspection and copying or photographing, by or on behalf of the defendant, of certain documents, items, and information. The bill instead requires the state, as soon as practicable after receiving a timely request from the defendant and subject to certain restrictions, to produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers but not including the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence

material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state. The bill authorizes the state to provide to the defendant electronic duplicates of any documents or other information described by the bill's provisions.

S.B. 1611 establishes that if only a portion of the applicable document, item, or information is subject to discovery, the state is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and is authorized to withhold or redact that portion. The bill requires the state to inform the defendant that a portion of the document, item, or information has been withheld or redacted. The bill requires the court, on request of the defendant, to conduct a hearing to determine whether withholding or redaction is justified by law.

S.B. 1611 requires the state, if a court orders the state to produce and permit the inspection of a document, item, or information in the case of a pro se defendant, to permit the pro se defendant to inspect and review the document, item, or information, but does not require the state to allow electronic duplication of those materials in such a case.

S.B. 1611 prohibits the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant, except as otherwise provided in the bill, from disclosing to a third party any documents, evidence, materials, or witness statements received from the state under the bill's provisions unless a court orders the disclosure upon a showing of good cause after notice and hearing and after considering the security and privacy interests of any victim or witness or unless the documents, evidence, materials, or witness statements have already been publicly disclosed. The bill authorizes the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, to allow a defendant, witness, or prospective witness to view the information provided under the bill's provisions, but prohibits allowing that person to have copies of the information provided, other than a copy of the witness's own statement. The bill requires the person possessing the information, before allowing such a person to view a document or the witness statement of another, to redact certain identifying personal information contained in the document or witness statement. The bill prohibits the defendant from being the agent for the attorney representing the defendant for such purposes.

S.B. 1611 prohibits its provisions from being interpreted to limit an attorney's ability to communicate regarding his or her case within the Texas Disciplinary Rules of Professional Conduct, except for the communication of information identifying any victim or witness or any information that by reference would make it possible to identify a victim or witness. That prohibition does not prohibit the disclosure of identifying information to an administrative, law enforcement, regulatory, or licensing agency for the purpose of making a good faith complaint.

S.B. 1611 requires the state to disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged. The bill requires the state to electronically record or otherwise document any document, item, or other information provided to the defendant under the bill's provisions. The bill requires each party, before accepting a plea of guilty or nolo contendere or before trial, to acknowledge in writing or on the record in open court the disclosure, receipt, and list of all documents, items, and information provided to the defendant under the bill's provisions. The bill requires the state, if at any time before, during, or after trial the state discovers any additional exculpatory, impeachment, or mitigating document, item, or information required to be disclosed to the defendant to promptly disclose the existence of the document, item, or information to the defendant or the court.

S.B. 1611 authorizes a court to order the defendant to pay costs related to discovery under the

bill's provisions that do not exceed the charges for providing copies of public information under state public information law. The bill's provisions prevail to the extent of any conflict with state public information law. The bill's provisions do not prohibit the parties from agreeing to discovery and documentation requirements equal to or greater than those required by the bill.

EFFECTIVE DATE

January 1, 2014.