By: McClendon H.B. No. 1625

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) The attorney representing the state shall disclose to the defendant's counsel and permit inspection, photocopying, and 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) the substance of any relevant oral statement that is made by the defendant, regardless of whether made before or after the defendant's arrest, in response to interrogation by a person who the defendant knew was a law enforcement officer, if the attorney representing the state intends to use the substance of the statement at the trial;

(3) the substance of any exculpatory oral or written statement that is made by any witness, regardless of whether made before or after the defendant's arrest;

(4) any relevant written or recorded statement made by the defendant, if known or should have been known through the

exercise of due diligence by the attorney representing the state;

(5) the portion of any written record containing the substance of any relevant oral statement that is made by the defendant, regardless of whether made before or after the defendant's arrest, in response to interrogation by a person who the defendant knew was a law enforcement officer;

(6) any recorded or transcribed testimony of the defendant before a grand jury relating to the offense charged;

(7) any exculpatory recorded or transcribed testimony of a witness before a grand jury relating to the offense charged;

(8) a copy of the prior criminal record of the defendant, if known or should have been known through the exercise of due diligence by the attorney representing the state;

(9) any book, document, police report, photograph, tangible object, trial exhibit, or electronic copy of those items or a building or place that:

(A) is material to the preparation of the defense;

(B) the state may offer in evidence at trial; or

(C) was obtained from or belongs to the defendant or a witness;

(10) on request by the defendant, the result or report of a physical or mental examination of any person or of a scientific test or experiment that:

(A) is known or should have been known through the exercise of due diligence by the attorney representing the state; and

(B) is material to the preparation of the defense or the state may offer in evidence at trial; and

(11) the names and addresses of the witnesses the state may call at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence, and the names of all other witnesses the attorney representing the state intends to call at trial. [~~Upon motion of the defendant showing good cause therefor and upon notice to the other parties, except as provided by Article 39.15, the court in which an action is pending shall 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 state requests discovery under Section 2(a)(2) and the defendant complies, the state must, on request by the defendant, provide a written summary of testimony that the attorney representing the state may introduce at trial under Rules 702, 703, and 705, Texas Rules of Evidence, as evidence of the defendant's mental condition. The summary must describe:

(1) the opinion of the witness;

(2) the bases and reasons for the opinion; and

(3) the qualifications of the witness [~~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) If the defendant is a corporation, partnership, association, or other legal entity, the attorney representing the state must disclose to the defendant's counsel any statement described by Subsection (a)(2) or (a)(3) if the state contends that the person making the statement, because of the person's position as the defendant's director, officer, employee, or agent, was capable of legally binding the defendant regarding:

(1) the subject of the statement; or

(2) the alleged conduct constituting the offense, if the person was involved in the conduct.

(d) A court may impose any sanctions the court is authorized to impose for noncompliance with a court order against a party for failure to comply with Subsection (a), (b), or (c).

(e) Notwithstanding Subsection (d), a party may move for a protective order under Section 4 and production of an item is stayed pending a ruling by the court, if, in the judgment of the party, good cause exists for declining to make the disclosure.

(f) The attorney representing the state is not required to disclose materials or information that is:

(1) a work product, including a report, memorandum, or other internal document of the attorney representing the state or an investigator or other agent of the attorney representing the state that is made in connection with the investigation or prosecution of the case, except as provided by Subsections (a), (b), and (c); or

(2) recorded proceedings of a grand jury, except as provided by Subsections (a)(6) and (a)(7) and by Rule 615, Texas Rules of Evidence.

(g) On receipt of information that any item described by Subsection (a), (b), or (c) exists, the attorney representing the state shall notify counsel for the defendant of the existence of the item and all information known to the state concerning the location of the item and the identity of any person possessing the item. The requirements of this subsection apply even if the item is not within

the physical possession, custody, or control of the state, an agent of the state, or a person who has participated in the investigation or evaluation of the case.

(h) At any time, a party may move for an order requiring an individual, agency, or other legal entity in possession, custody, or control of an item related to the case to preserve the item for a specified period of time. The court shall hear and rule on the motion expeditiously. The court may modify or vacate the order on a showing that preservation of particular evidence will create significant hardship, on condition that the probative value of the evidence is preserved by an alternative method specified by the court.

Sec. 2. DISCLOSURE BY DEFENDANT. (a) On a request by the state, a defendant shall provide to the state a written summary of any expert testimony that the defendant intends to use as evidence at trial, if:

(1) the defendant has requested disclosure under Section 1(a)(10) and the state complies; or

(2) the defendant has given notice of an intent to present expert testimony on the defendant's mental condition.

(b) A summary under Subsection (a) must describe:

(1) the opinion of the witness;

(2) the bases and reasons for the opinion; and

(3) the qualifications of the witness.

(c) Except for scientific or medical reports related to the testimony of an expert witness, this section does not authorize discovery or inspection of:

(1) reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during or in anticipation of the investigation or defense of the case; or

(2) a statement made to the defendant, or the defendant's attorney or agent, by:

(A) the defendant;

(B) any witness; or

(C) any prospective witness.

Sec. 3. CONTINUING DUTY TO DISCLOSE. A party who discovers additional information or material before or during trial shall promptly disclose its existence to the other party or the court if:

(1) the information or material is subject to discovery or inspection under this article; and

(2) the other party previously requested, or the court ordered, the production of the information or material.

Sec. 4. 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.

(b) The court may permit a party to show good cause by a verified written statement for the court to inspect in camera. The court shall preserve the entire text of the party's statement under seal if relief is granted.

(c) The court may, on a showing of good cause, grant discovery to a defendant on the condition that the material to be discovered is to be made available only to counsel for the defendant.

(d) This section does not alter the allocation of the burden

of proof with regard to the matter at issue, including privilege.

Sec. 5. COMPLIANCE. If a party fails to comply with this article, the court may on its own motion or a motion by a party:

(1) order that party to permit the discovery or inspection, including a specification of the time, place, and manner of making the required disclosure;

(2) grant a continuance;

(3) prohibit that party from introducing the undisclosed evidence; or

(4) enter any order that the court finds necessary under the circumstances.

Sec. 6. CERTIFICATE OF COMPLIANCE. When the state has provided all discovery required under this article or by an order of the court, the state shall file a certificate of compliance with the court. The certificate shall state that, to the best of the attorney representing the state's knowledge and after reasonable inquiry, the attorney has disclosed and made available all items subject to discovery, and the certificate must identify each item provided. If further discovery is subsequently provided, a supplemental certificate must be filed with the court identifying the additional items provided.

SECTION 2. Article 39.15(d), Code of Criminal Procedure, is amended to read as follows:

(d) For purposes of Subsection (c), property or material is considered to be reasonably available to the defendant if, at a facility under the control of the state, the state provides the property or material [~~ample opportunity~~] for [~~the~~] inspection,

viewing, and examination [~~of the property or material~~] by the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial not later than:

(1) the seventh day after the date the request was made; and

(2) the seventh day before the date of the next hearing.

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 that 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, 2013.