

By: Canales

H.B. No. 2988

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of exculpatory evidence by a prosecutor in a criminal case.

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

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

1 officer, investigator, or other individual involved in the  
2 investigation or prosecution of a case [~~facts or secrete witnesses~~  
3 ~~capable of establishing the innocence of the accused~~].

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

6 Art. 2.02. DUTIES OF COUNTY ATTORNEYS. (a) The county  
7 attorney shall attend the terms of court in the [~~his~~] county below  
8 the grade of district court, and shall represent the State in all  
9 criminal cases under examination or prosecution in the [~~said~~]  
10 county; and in the absence of the district attorney, the county  
11 attorney [~~he~~] shall represent the State alone and, when requested,  
12 shall aid the district attorney in the prosecution of any case in  
13 behalf of the State in the district court. The county attorney [~~He~~]  
14 shall represent the State in cases the county attorney [~~he~~] has  
15 prosecuted that [~~which~~] are appealed.

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

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

24 Art. 2.021. DUTIES OF ATTORNEY GENERAL. (a) The attorney  
25 general may offer to a county or district attorney the assistance of  
26 the attorney general's office in the prosecution of an offense  
27 described by Article 60.051(g) the victim of which is younger than

1 17 years of age at the time the offense is committed. On request of  
2 a county or district attorney, the attorney general shall assist in  
3 the prosecution of an offense described by Article 60.051(g) the  
4 victim of which is younger than 17 years of age at the time the  
5 offense is committed. For purposes of this article, assistance  
6 includes investigative, technical, and litigation assistance of  
7 the attorney general's office.

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

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

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

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

27 (2) provided all evidence described by Subdivision (1)

1 to the defendant and the defendant's attorney.

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

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

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

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

20 (2) provided all evidence described by Subdivision (1)  
21 to the defendant and the defendant's attorney, regardless of  
22 whether the defendant has made a motion under Article 39.14.

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

1 effect for that purpose.

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