

By: Canales

H.B. No. 1010

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the disclosure of certain information and evidence by a  
3 prosecutor in a criminal case.

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

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

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

18 (b) It is [~~shall be~~] the primary duty of all prosecuting  
19 attorneys, including any special prosecutors, not to convict, but  
20 to see that justice is done. A district attorney may [~~They shall~~]  
21 not suppress evidence that would deprive a defendant of a fair  
22 trial. A district attorney has a duty to identify any information or  
23 evidence that tends to negate the defendant's guilt or mitigate the  
24 punishment for the offense and that is in the possession, custody,

1 or control of the State [~~facts or secrete witnesses capable of~~  
2 ~~establishing the innocence of the accused~~].

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

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

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

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

22 Art. 2.021. DUTIES OF ATTORNEY GENERAL. (a) The attorney  
23 general may offer to a county or district attorney the assistance of  
24 the attorney general's office in the prosecution of an offense  
25 described by Article 60.051(g) the victim of which is younger than  
26 17 years of age at the time the offense is committed. On request of  
27 a county or district attorney, the attorney general shall assist in

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

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

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

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

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

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

27 (f) The court must substantially comply with Subsections

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

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

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

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

17 (2) provided all information and evidence described by  
18 Subdivision (1) to the defendant and the defendant's attorney,  
19 regardless of whether the defendant has made a motion under Article  
20 [39.14](#).

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

27 SECTION 7. This Act takes effect September 1, 2015.