By:  West S.B. No. 508

(In the Senate - Filed January 28, 2021; March 9, 2021, read first time and referred to Committee on Criminal Justice; April 21, 2021, reported favorably by the following vote: Yeas 7, Nays 0; April 21, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Huffman         X

Bettencourt     X

Birdwell        X

Hinojosa        X

Miles           X

Nichols         X

A BILL TO BE ENTITLED

AN ACT

relating to the confidentiality of and discovery procedures relating to certain material regarding the protection or security of a witness; creating a criminal offense.

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

SECTION 1.  This Act may be cited as the Tyrek Jenkins Act.

SECTION 2.  Article 39.14(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Subject to the restrictions provided by Section 264.408, Family Code, and Articles [~~Article~~] 39.15 and 39.16 of this code, as soon as practicable after receiving a timely request from the defendant the state shall 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 state may provide to the defendant electronic duplicates of any documents or other information described by this article. The rights granted to the defendant under this article do not extend to written communications between the state and an agent, representative, or employee of the state. This article does not authorize the removal of the documents, items, or information from the possession of the state, and any inspection shall be in the presence of a representative of the state.

SECTION 3.  Chapter 39, Code of Criminal Procedure, is amended by adding Article 39.16 to read as follows:

Art. 39.16.  MATERIAL RELATED TO WITNESS PROTECTION OR SECURITY. (a) This article applies to any record, claim, writing, document, information, or other material:

(1)  received, made, or kept by an agency or program with the primary purpose of protecting, securing, or relocating witnesses; or

(2)  in the possession of the state and relating to the protecting, securing, or relocating of a witness by an agency or program described by Subdivision (1).

(b)  Notwithstanding Article 39.14, the state may not produce for the defendant or permit the inspection by the defendant of material described by Subsection (a) before the material has been submitted to the court for an in camera review and the court has determined that the production or inspection of the material is:

(1)  required under the United States Constitution; or

(2)  otherwise necessary for a matter before the court.

(c)  To preserve material for appellate review, the court shall place any material reviewed in camera under this article under seal of the court.

(d)  A prosecutor or other attorney representing an agency or program with the primary purpose of protecting, securing, or relocating witnesses has standing in any criminal action to oppose the disclosure of material under this article.

SECTION 4.  Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.0065 to read as follows:

Sec. 30.0065.  MATERIAL RELATED TO WITNESS PROTECTION OR SECURITY. (a) This section applies to any record, claim, writing, document, information, or other material:

(1)  received, made, or kept by an agency or program with the primary purpose of protecting, securing, or relocating witnesses; or

(2)  in the possession of the state and relating to the protecting, securing, or relocating of a witness by an agency or program described by Subdivision (1).

(b)  A party in a civil case may not produce or release material described by Subsection (a) before the material has been submitted to the court for an in camera review and the court has determined that the production or release of the material is necessary for a matter before the court.

(c)  To preserve material for appellate review, the court shall place any material reviewed in camera under this section under seal of the court.

(d)  A prosecutor or other attorney representing an agency or program with the primary purpose of protecting, securing, or relocating witnesses has standing in any civil action to oppose the disclosure of material under this section.

SECTION 5.  Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.1082 to read as follows:

Sec. 552.1082.  EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION REGARDING WITNESS PROTECTION OR SECURITY. Information is confidential and excepted from the requirements of Section 552.021 if the information is:

(1)  received, made, or kept by an agency or program with the primary purpose of protecting, securing, or relocating witnesses; or

(2)  in the possession of the state and relating to the protecting, securing, or relocating of a witness by an agency or program described by Subdivision (1).

SECTION 6.  Chapter 38, Penal Code, is amended by adding Section 38.20 to read as follows:

Sec. 38.20.  UNLAWFUL DISCLOSURE OF MATERIAL RELATED TO WITNESS PROTECTION OR SECURITY. (a) A person commits an offense if the person knowingly discloses any record, claim, writing, document, information, or other material:

(1)  in violation of Article 39.16, Code of Criminal Procedure, or Section 30.0065, Civil Practice and Remedies Code; or

(2)  in response to a request under Chapter 552, Government Code, when the record, claim, writing, document, information, or other material is confidential and excepted from disclosure under Section 552.1082, Government Code.

(b)  An offense under this section is a Class A misdemeanor.

SECTION 7.  (a) Article 39.14, Code of Criminal Procedure, as amended by this Act, and Article 39.16, Code of Criminal Procedure, as added by this Act, apply only 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 governed by the law in effect on the date 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.

(b)  Section 30.0065, Civil Practice and Remedies Code, as added by this Act, applies only to an action commenced on or after the effective date of this Act.

(c)  Section 552.1082, Government Code, as added by this Act, applies only to a request for public information received on or after the effective date of this Act. A request for public information received before the effective date of this Act is governed by the law in effect on the date the request was received, and the former law is continued in effect for that purpose.

SECTION 8.  This Act takes effect September 1, 2021.

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