

AN ACT

relating to discovery in a criminal case.

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

SECTION 1. This Act shall be known as the Michael Morton Act.

SECTION 2. Article 39.14, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsections (c) through (n) to read as follows:

(a) Subject to the restrictions provided by Section 264.408, Family Code, and Article 39.15 of this code, as soon as practicable after receiving a timely request from the defendant the state shall [~~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 the electronic duplication, copying, and [~~or~~] photographing, by or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements [~~statement~~] of the defendant or a witness, including witness statements of law enforcement officers but not including [~~,—(except written statements of witnesses and except~~] 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,

1 photographs, or objects or other tangible things not otherwise
2 privileged that [~~, which~~] constitute or contain evidence material to
3 any matter involved in the action and that [~~which~~] are in the
4 possession, custody, or control of the state or any person under
5 contract with the state [~~State or any of its agencies~~]. The state
6 may provide to the defendant electronic duplicates of any documents
7 or other information described by this article. The [~~order shall~~
8 ~~specify the time, place and manner of making the inspection and~~
9 ~~taking the copies and photographs of any of the aforementioned~~
10 ~~documents or tangible evidence; provided, however, that the~~] rights
11 granted to the defendant under this article do [~~herein granted~~
12 ~~shall~~] not extend to written communications between the state and
13 an agent, representative, or employee of the state. This article
14 does not authorize [~~State or any of its agents or representatives or~~
15 ~~employees. Nothing in this Act shall authorize~~] the removal of the
16 documents, items, or information [~~such evidence~~] from the
17 possession of the state [~~State~~], and any inspection shall be in the
18 presence of a representative of the state [~~State~~].

19 (c) If only a portion of the applicable document, item, or
20 information is subject to discovery under this article, the state
21 is not required to produce or permit the inspection of the remaining
22 portion that is not subject to discovery and may withhold or redact
23 that portion. The state shall inform the defendant that a portion
24 of the document, item, or information has been withheld or
25 redacted. On request of the defendant, the court shall conduct a
26 hearing to determine whether withholding or redaction is justified
27 under this article or other law.

1 (d) In the case of a pro se defendant, if the court orders
2 the state to produce and permit the inspection of a document, item,
3 or information under this subsection, the state shall permit the
4 pro se defendant to inspect and review the document, item, or
5 information but is not required to allow electronic duplication as
6 described by Subsection (a).

7 (e) Except as provided by Subsection (f), the defendant, the
8 attorney representing the defendant, or an investigator, expert,
9 consulting legal counsel, or other agent of the attorney
10 representing the defendant may not disclose to a third party any
11 documents, evidence, materials, or witness statements received
12 from the state under this article unless:

13 (1) a court orders the disclosure upon a showing of
14 good cause after notice and hearing after considering the security
15 and privacy interests of any victim or witness; or

16 (2) the documents, evidence, materials, or witness
17 statements have already been publicly disclosed.

18 (f) The attorney representing the defendant, or an
19 investigator, expert, consulting legal counsel, or agent for the
20 attorney representing the defendant, may allow a defendant,
21 witness, or prospective witness to view the information provided
22 under this article, but may not allow that person to have copies of
23 the information provided, other than a copy of the witness's own
24 statement. Before allowing that person to view a document or the
25 witness statement of another under this subsection, the person
26 possessing the information shall redact the address, telephone
27 number, driver's license number, social security number, date of

1 birth, and any bank account or other identifying numbers contained
2 in the document or witness statement. For purposes of this section,
3 the defendant may not be the agent for the attorney representing the
4 defendant.

5 (g) Nothing in this section shall be interpreted to limit an
6 attorney's ability to communicate regarding his or her case within
7 the Texas Disciplinary Rules of Professional Conduct, except for
8 the communication of information identifying any victim or witness,
9 including name, except as provided in Subsections (e) and (f),
10 address, telephone number, driver's license number, social
11 security number, date of birth, and bank account information or any
12 information that by reference would make it possible to identify a
13 victim or a witness. Nothing in this subsection shall prohibit the
14 disclosure of identifying information to an administrative, law
15 enforcement, regulatory, or licensing agency for the purposes of
16 making a good faith complaint.

17 (h) Notwithstanding any other provision of this article,
18 the state shall disclose to the defendant any exculpatory,
19 impeachment, or mitigating document, item, or information in the
20 possession, custody, or control of the state that tends to negate
21 the guilt of the defendant or would tend to reduce the punishment
22 for the offense charged.

23 (i) The state shall electronically record or otherwise
24 document any document, item, or other information provided to the
25 defendant under this article.

26 (j) Before accepting a plea of guilty or nolo contendere, or
27 before trial, each party shall acknowledge in writing or on the

1 record in open court the disclosure, receipt, and list of all
2 documents, items, and information provided to the defendant under
3 this article.

4 (k) If at any time before, during, or after trial the state
5 discovers any additional document, item, or information required to
6 be disclosed under Subsection (h), the state shall promptly
7 disclose the existence of the document, item, or information to the
8 defendant or the court.

9 (l) A court may order the defendant to pay costs related to
10 discovery under this article, provided that costs may not exceed
11 the charges prescribed by Subchapter F, Chapter 552, Government
12 Code.

13 (m) To the extent of any conflict, this article prevails
14 over Chapter 552, Government Code.

15 (n) This article does not prohibit the parties from agreeing
16 to discovery and documentation requirements equal to or greater
17 than those required under this article.

18 SECTION 3. The change in law made by this Act applies to the
19 prosecution of an offense committed on or after the effective date
20 of this Act. The prosecution of an offense committed before the
21 effective date of this Act is covered by the law in effect when the
22 offense was committed, and the former law is continued in effect for
23 this purpose. For purposes of this section, an offense is committed
24 before the effective date of this Act if any element of the offense
25 occurs before the effective date.

26 SECTION 4. This Act takes effect January 1, 2014.

S.B. No. 1611

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1611 passed the Senate on April 11, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1611 passed the House on May 14, 2013, by the following vote: Yeas 146, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor