

By: Carona

S.B. No. 661

A BILL TO BE ENTITLED

1

AN ACT

2 relating to discovery in a criminal case and the consequences of a
3 failure to disclose certain discoverable evidence in a timely
4 manner.

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

6 SECTION 1. Article 39.14, Code of Criminal Procedure, is
7 amended by amending Subsection (a) and adding Subsections (c), (d),
8 and (e) to read as follows:

9 (a) Not later than the 30th day after the date an
10 information or indictment is filed in a criminal action [~~Upon~~
11 ~~motion of the defendant showing good cause therefor and upon notice~~
12 ~~to the other parties~~], the court in which the [~~an~~] action is pending
13 shall order the State [~~before or during trial of a criminal action~~
14 ~~therein pending or on trial~~] to produce and permit defense counsel
15 to inspect [~~the inspection~~] and, on the condition that defense
16 counsel is prohibited from further reproduction by or dissemination
17 to a person other than an agent of the attorney, to copy [~~copying~~]
18 or photograph [~~photographing by or on behalf of the defendant of~~]
19 any designated documents, papers, reports by law enforcement
20 personnel, written statements of witnesses, written statements
21 [~~statement~~] of the defendant, ([~~except written statements of~~
22 ~~witnesses and~~] except the work product of counsel in the case and
23 their investigators and their notes or report), books, accounts,
24 letters, photographs, objects or tangible things not privileged,

1 which constitute or contain evidence material to any matter
2 involved in the action and which are in the possession, custody or
3 control of the State or any of its agencies. The order shall
4 specify the time, place and manner of making the inspection and
5 taking the copies and photographs of any of the aforementioned
6 documents or tangible evidence; provided, however, that the
7 rights herein granted shall not extend to written communications
8 between the State or any of its agents or representatives or
9 employees. Release of information held by a prosecuting attorney
10 to defense counsel in pending or reasonably anticipated litigation
11 is not a voluntary disclosure under Section 552.007, Government
12 Code, and does not bar the State from asserting exceptions to
13 required disclosure with respect to information released. Nothing
14 in this Act shall authorize the removal of [~~such~~] evidence
15 described by this subsection from the possession of the State, and
16 defense counsel shall make any inspection [~~shall be~~] in the
17 presence of a representative of the State.

18 (c) The State shall supplement or amend, as necessary and
19 within a reasonable period, discovery ordered under this article.
20 If after the 10th day before trial begins, or during trial, the
21 State discloses evidence in violation of the reasonable period for
22 discovery required by this subsection and if the evidence is
23 materially favorable to the defendant, the manner in which defense
24 counsel uses that evidence at trial may not be considered against
25 the defendant in any subsequent review of the case.

26 (d) The prosecuting attorney may redact law enforcement
27 reports or witness statements for good cause. If defense counsel

1 intentionally violates a court order relating to discovery of a law
2 enforcement report or a witness statement, the prosecuting attorney
3 may restrict further discovery as necessary under the
4 circumstances. This subsection does not prohibit the discovery of
5 evidence materially favorable to the defendant.

6 (e) A district or county attorney may enter into a written
7 agreement with a local criminal defense bar association regarding
8 the implementation of the discovery procedures described by this
9 article.

10 SECTION 2. The changes in law made by Article 39.14, Code of
11 Criminal Procedure, as amended by this Act, apply to a criminal
12 action for which the information or indictment was filed on or after
13 the effective date of this Act. A criminal action for which the
14 information or indictment was filed before the effective date of
15 this Act is covered by the law in effect on the date the information
16 or indictment was filed, and the former law is continued in effect
17 for that purpose.

18 SECTION 3. This Act takes effect September 1, 2009.