

BILL ANALYSIS

Senate Research Center
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H.B. 969
By: Keel (Hinojosa)
Criminal Justice
5/14/2005
Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 969 mandates discovery in a criminal prosecution by the defendant of the prosecution's evidence, except that which is work product or privileged. The amendment changes the current language to require, rather than authorize, the court to order the production of this evidence. The granting of a motion for discovery is still predicated upon a defendant's showing of good cause as well as proper notice and the state's unfettered control of the evidence itself.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 39.14(a), Code of Criminal Procedure, to require, rather than authorize, the court in which an action is pending, upon motion of the defendant showing good cause and upon notice to the other parties, to order the state before or during the trial of a criminal action pending or on trial to produce and permit the inspection, copying, and photographing by or on behalf of the defendant of certain evidence which is not privileged and is in the possession, custody, or control of the state or any state agency.

SECTION 2. Makes application of this Act prospective to a motion of discovery filed on or after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

Amends H.B. No. 969 (Engrossed version) by striking SECTIONS 1, 2, and 3 of the bill (page 1, line 4, through page 2, line 13) and substituting the following:

SECTION 1. Amends Article 39.14, Code of Criminal Procedure, as follows:

Art. 39.14. DISCOVERY

Sec. 1. DISCLOSURE BY STATE. (a) Requires the attorney representing the state, as soon as practicable after receiving timely request from the defendant, to disclose to the defendant or the defendant's counsel and permit inspection, photocopying, or photographing of certain specified materials and information in the possession, custody, or control of the state or any of its agencies. Deletes existing text of this subsection.

(b) Requires the attorney representing the state, if the defendant gives notice of a certain defense, not later than 10 days before the date trial begins, to disclose to the defendant or the defendant's counsel the names and addresses of the witnesses the state intends to use to rebut the defense or the testimony of any of the defendant's witnesses called to establish that defense. Deletes existing text of this subsection.

(c) Provides that this article does not authorize the removal of physical evidence from the possession of the state. Requires any inspection of physical evidence to be conducted in the presence of a representative of the state.

Sec. 2. DISCLOSURE BY DEFENDANT. (a) Requires the defendant, as soon as practicable after receiving the initial disclosure under Section 1 from the attorney representing the state, to disclose to the attorney representing the state and permit inspection, photocopying, or photographing of certain specified materials and information.

(b) Requires a defendant planning to offer evidence of certain defenses, on a request by the state, to file a good faith notice of intent to raise the defense with the court and the attorney representing the state not later than the 30th day before the date the trial begins. Requires the notice to include certain information if the defendant intends to raise an alibi defense. Provides that any notice provided under this subsection is for purposes of discovery only and is not admissible at trial unless the court finds that the contents of the notice were not made in good faith.

(c) Authorizes the court, after the filing of the indictment or information, to require the defendant to submit nontestimonial evidence to the state. Provides that this article does not limit any law enforcement or prosecuting agency from seeking or obtaining nontestimonial evidence to the extent permitted by law.

Sec. 3. EXCEPTIONS TO DISCLOSURE. (a) Sets forth certain materials and information that neither the attorney representing the state nor the defendant is required to disclose.

(b) Provides that this article does not authorize disclosure of certain personal information about the victim in violation of the provisions of Chapter 57 (Confidentiality of Identifying Information of Sex Offense Victims).

(c) Sets forth the circumstances under which a victim impact statement is subject to disclosure before the testimony of the victim is taken.

Sec. 4. CONTINUING DUTY TO DISCLOSE. Requires a party, if before trial begins but subsequent to compliance with this article or a relevant court order, the party discovers additional material or information subject to disclosure, to immediately notify the other party or the other party's counsel of the existence of the additional material or information.

Sec. 5. EXCISION. (a) Provides that, except as provided by Subsection (b), if a portion of material or information is subject to discovery under this article and a portion is not subject to discovery, only the portion that is subject to discovery must be disclosed. Requires the disclosing party to inform the other party that the portion or material or information that is not subject to discovery has been excised and withheld. Requires the court, on request, to conduct a hearing to determine whether the reasons for excision are justifiable. Requires material or information excised pursuant to judicial order to be sealed and preserved in the records of the court and to be made available to an appellate court in the event of an appeal.

(b) Provides that excision of a statement in accordance with Rule 615, Texas Rules of Evidence, is governed by that rule.

Sec. 6. PROTECTIVE ORDERS. (a) Authorizes the court, on showing of good cause, to enter at any time an appropriate protective order that a specified disclosure be denied, restricted, or deferred. Defines "good cause."

(b) Requires the party in possession of a protective order granted concerning the personal information for a victim or witness to make the victim or witness

available for an interview by the opposing party or their representative at a time, date, place and manner specified by the court.

Sec. 7. IN CAMERA PROCEEDINGS. Authorizes the court, on request, to permit an excision hearing under Section 5(a) to be made in camera, a showing of good cause for denial or regulation of a disclosure under Section 6, or any portion of a proceeding. Requires a verbatim record to be made of a proceeding in camera. Requires the entire record to be sealed and preserved in the records of the court and to be made available to an appellate court in the event of an appeal, if the court excises a portion of the material or information or enters an order granting relief following a showing of good cause.

Sec. 8. CONFERENCE. Requires the court, on request of the attorney representing the state or the defendant, to hold a discovery hearing not later than the 10th day before the date the trial begins, to verify compliance by each party with this article.

Sec. 9. COMPLIANCE; SANCTIONS. (a) Authorizes the disclosures required under this article to be performed in any manner that is mutually agreeable to the attorney representing the state and the defendant or that is ordered by the court in accordance with this article.

(b) Authorizes the court, on a showing that a party has not complied with this article or a relevant court order, to make any order the court finds necessary under the circumstances, including an order related to immediate disclosure, contempt proceedings, delay or prohibition of the testimony of a witness or the presentation of real evidence, or continuance of the matter. Authorizes the court to also inform the jury of any failure or refusal to disclose or any untimely disclosure under this article.

(c) Authorizes the court to prohibit the use of a defense or the presentation of a witness under Subsection (b) only if all other sanctions have been exhausted or the discovery violation amounts to willful misconduct designed to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence. Prohibits the court from dismissing a charge under Subsection (b) unless required to do so by the Texas Constitution or the United States Constitution.

SECTION 2. Repealer: Section 2 (Raising the Insanity Defense), Article 46.03, Code of Criminal Procedure.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.