

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1611  
By: Ellis et al.  
Criminal Justice  
3/27/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Criminal discovery—the exchange of relevant information between prosecutors and the defense prior to trial—is both necessary for a fair and just criminal justice system, and also required as part of a defendant's constitutional right to a full defense.

*Brady v. Maryland* requires prosecutors to turn over to the defense any evidence that is relevant to the defendant's case. However, *Brady* is vague and open to interpretation, resulting in different levels of discovery across different counties in Texas. That is why a uniform discovery statute is needed. C.S.S.B. 1611 will save attorney resources as well as taxpayer dollars by limiting discovery disputes and increasing efficient resolution of cases, all while reducing the likelihood of costly appeals and wrongful convictions.

C.S.S.B. 1611 requires prosecutors to turn over to the defense any relevant evidence that may help the defendant, including witness lists. The defense also has a reciprocal obligation to turn over certain information to the prosecution. C.S.S.B. 1611 also clearly defines what is considered to be privileged work product so that there is no question as to what is considered confidential.

Open file discovery is important for several reasons. First, it promotes efficiency in the criminal justice system. A defendant who understands the extent of the evidence against him can make an informed decision to plead. It also allows for a full defense, lessening the likelihood of an overturned verdict on appeal. The state saves thousands of dollars in appeals, incarceration, and potential compensation for wrongful convictions.

Open file discovery also ensures that each defendant is guaranteed his constitutional right to a defense, regardless of where he is charged. A defendant's chances to a fair trial often vary according to jurisdiction, because of the lack of a uniform discovery law. A statewide criminal discovery policy ensures that no matter where a defendant is on trial, he is guaranteed to all the protections afforded to him by the Constitution.

Most importantly, C.S.S.B. 1611 helps prevent wrongful convictions. Recent high profile cases in Texas show that with open file discovery, the likelihood that evidence relevant to the defendant's innocence would have been revealed is increased. Every defendant should have access to all the evidence relevant to his guilt or innocence, with adequate time to examine it. The state also saves billions of dollars in ensuring that the defendants sent to prison are actually guilty. Finally, public safety is threatened if an innocent person is in prison while the guilty party goes free.

C.S.S.B. 1611 will uphold a defendant's constitutional right to a defense, minimize the likelihood of wrongful convictions, save thousands in taxpayer dollars, promote an efficient justice system, and improve public safety, all while increasing the public's confidence in the criminal justice system.

C.S.S.B. 1611 amends current law relating to discovery in a criminal case.

## **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. Requires this Act to be known as the Michael Morton Act.

SECTION 2. Amends Article 39.14, Code of Criminal Procedure, by amending Subsection (a) and adding Subsections (c) through (j), as follows:

(a) Requires the state, subject to the restrictions provided by Article 39.15, as soon as practicable after receiving a timely request from the defendant, to produce and permit the inspection and the electronic duplication or photographing, by or on behalf of the defendant, of any offense reports or of 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, books, accounts, letters, photographs, or objects or tangible things not otherwise privileged which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody, or control of the state or any person under contract with the state. Authorizes the state to provide electronically to or duplicate electronically for the defendant any documents, items, and information described by this article. Provides that 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. Provides that this article does not authorize the removal of the documents, items, or information from the possession of the state, and requires that any inspection be in the presence of a representative of the state.

Deletes existing text requiring the court in which an action is pending, upon motion of the defendant showing good cause therefore and upon notice to the other parties, except as provided by Article 39.15, to order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects or tangible things not privileged which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. Deletes existing text requiring that the order specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence, provided, however, that the rights herein granted is required to not extend to written communications between the State or any of its agents or representative or employees. Deletes existing text requiring that nothing in this act authorize the removal of such evidence from the possession of the State, and that any inspection be in the presence of a representative of the State.

(c) Provides that if only a portion of the applicable document, item, or information is subject to discovery under this article, the state is not required to produce or permit the inspection of the remaining portion and is authorized to withhold or redact that portion. Requires the state to inform the defendant that a portion of the document, item, or information has been withheld or redacted. Requires the court, on request of the defendant, to conduct a hearing to determine whether withholding or redaction is justified under this article or other law.

(d) Authorizes the court, on a showing of good cause specific to the case, to enter an appropriate protective order that a specified disclosure be denied, restricted, or deferred or that the attorney representing the defendant is prohibited from distributing to a third party offense reports or witness statements received from the state. Defines, for purposes

of this subsection, "good cause." Requires the state, in the case of a pro se defendant, if the court orders the state to produce and permit the inspection of the document, item, or information under this subsection, to permit the pro se defendant to inspect and review the document, item, or information but provides that, notwithstanding Subsection (a), the state is not required to allow electronic duplication of the document, item, or information.

(e) Requires the state, notwithstanding any provision of this article, to disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.

(f) Requires the state to document or otherwise electronically record the documents, items, and information provided to the defendant under this article.

(g) Requires each party, before accepting a plea of guilty or nolo contendere, or before trial, to acknowledge in writing or on the record in open court the disclosure, receipt, and list of the documents, items, and information provided to the defendant under this article.

(h) Requires the state, if at any time before, during, or after trial the state discovers any additional documents, items, or information required to be disclosed under Subsection (e), to promptly disclose the existence of the documents, items, or information to the defendant or the court.

(i) Authorizes a court to order the defendant to pay costs related to discovery under this article, provided that costs are prohibited from exceeding those provided for by Chapter 552 (Public Information), Government Code.

(j) Provides that to the extent of any conflict, this article prevails over Chapter 552, Government Code.

SECTION 3. Provides that the change in law made by this Act applies to the prosecution of an offense committed on or after the effective date of this Act. Provides that the prosecution of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. Provides that 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.

SECTION 4. Effective date: January 1, 2014.