

1-1 By: Creighton S.B. No. 2797
1-2 (In the Senate - Filed March 14, 2025; April 3, 2025, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 16, 2025, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 2; April 16, 2025,
1-6 sent to printer.)

1-7	COMMITTEE VOTE				
1-8		Yea	Nay	Absent	PNV
1-9	Flores	X			
1-10	Parker	X			
1-11	Hagenbuch	X			
1-12	Hinojosa of Hidalgo		X		
1-13	Huffman	X			
1-14	King	X			
1-15	Miles		X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 2797 By: Flores

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to discovery requirements in a criminal case.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. The heading to Article 39.14, Code of Criminal
1-22 Procedure, is amended to read as follows:
1-23 Art. 39.14. DISCOVERY: DISCLOSURE BY STATE.
1-24 SECTION 2. Article 39.14, Code of Criminal Procedure, is
1-25 amended by adding Subsection (h-2) to read as follows:
1-26 (h-2) If a defendant who will assert an alibi provides the
1-27 attorney representing the state a written response regarding the
1-28 alibi under Article 39.142(g), the attorney representing the state
1-29 shall provide the defendant with a written notice stating the name
1-30 of each witness the state intends to use to rebut the alibi not
1-31 later than the 10th day before the date that jury selection is
1-32 scheduled to begin, or in a trial without a jury, the presentation
1-33 of evidence is scheduled to begin.
1-34 SECTION 3. Chapter 39, Code of Criminal Procedure, is
1-35 amended by adding Article 39.142 to read as follows:
1-36 Art. 39.142. DISCOVERY: DISCLOSURE BY DEFENDANT. (a)
1-37 Subject to Subsection (b), on the defendant's request for discovery
1-38 under Article 39.14(a) or after receiving the initial disclosures
1-39 under that subsection from the attorney representing the state, the
1-40 defendant shall disclose to the attorney representing the state and
1-41 permit inspection, photocopying, and photographing of the
1-42 following materials and information:
1-43 (1) a written list of all witnesses the defendant
1-44 reasonably expects to call during trial;
1-45 (2) any written or recorded statement by a witness
1-46 other than the defendant that is related to the offense charged, if
1-47 the defendant intends to call the witness at trial;
1-48 (3) any physical or documentary evidence that the
1-49 defendant intends to use in the defendant's case in chief and, on a
1-50 showing of relevance by the attorney representing the state, the
1-51 opportunity to test that evidence;
1-52 (4) the locations of buildings and places concerning
1-53 which the defendant intends to offer evidence and permission by the
1-54 defendant for photographing; and
1-55 (5) any report produced by or for an expert witness
1-56 disclosed by the defendant under Article 39.145(a) and the
1-57 underlying data or facts supporting the opinion of the expert in
1-58 that particular case.
1-59 (b) The defendant shall make the disclosures required under
1-60 Subsection (a) not later than the later of:

(1) the 30th day before the date that jury selection is scheduled to begin, or in a trial without a jury, the presentation of evidence is scheduled to begin; or

(2) as soon as practicable after the date the defendant receives a disclosure from the state under Article 39.14(a).

(c) Following the disclosure of a witness's name under Subsection (a)(1), the attorney representing the state may request the court to order, on a showing of good cause, the disclosure of the last known address for the witness.

(d) If requested in writing by the attorney representing the state, a defendant who may assert one or more defenses or affirmative defenses listed in Chapter 8 or 9, Penal Code, shall provide the attorney representing the state with written notice that the defendant may assert the statutory defense or affirmative defense. Except as provided by Subsection (e), the defendant shall provide the notice required by this subsection not later than the later of:

(1) the 30th day before the date that jury selection is scheduled to begin, or in a trial without a jury, the presentation of evidence is scheduled to begin; or

(2) as soon as practicable after the date the defendant receives a disclosure from the state under Article 39.14(a) to which the statutory defense or affirmative defense is responsive.

(e) If the state amends the information or indictment or files a new information or obtains a new indictment after the 30th day before the date that jury selection is scheduled to begin, or in a trial without a jury, the presentation of evidence is scheduled to begin, the court shall allow the defendant not less than 10 days after being served with an amended or new information or indictment, or after having received actual notice of the amendment in open court, to amend or supplement an existing notice provided under Subsection (d) or to provide an initial notice under Subsection (d).

(f) Any notice provided by the defendant under Subsection (d) or (e) is for purposes of discovery only and is not admissible at trial.

(g) If requested by the attorney representing the state in a written request in which the attorney representing the state provides the defendant with the specific date, time, and place of the alleged offense, a defendant who will assert an alibi shall provide the attorney representing the state, not later than the 30th day before the date that jury selection is scheduled to begin, or in a trial without a jury, the presentation of evidence is scheduled to begin, a written response that includes:

(1) the location at which the defendant claims to have been at the time of the alleged offense; and

(2) the names of the witnesses the defendant intends to use to establish the alibi.

(h) Notwithstanding any other provision of this article, the defendant is not required to disclose under this article any document of the attorney representing the defendant, or an investigator or other agent of the attorney representing the defendant, that is made in connection with the investigation or defense of the case or privileged under the Texas Rules of Evidence, an express statutory provision, the Texas Constitution, or the United States Constitution, unless the document or information in the document is intended to be offered at trial.

(i) If at any time before or during the trial, the defendant discovers any additional document, item, or information required to be disclosed under Subsection (a), (d), (e), or (g), the defendant shall promptly disclose the existence of the document, item, or information to the attorney representing the state.

(j) After a hearing and on a showing of good cause, a court may order the state to pay reasonable costs related to discovery under this article.

(k) If the court finds that a defendant has failed to comply with any of the provisions of Subsection (a), the court may:

(1) order and compel the defendant to provide the required discovery or disclosure;
 (2) grant a continuance;
 (3) issue a protective order; or
 (4) take other appropriate action as necessary under the circumstances to accomplish the purposes of the required discovery or disclosure.

SECTION 4. Articles 39.14(b), (g), and (n), Code of Criminal Procedure, are redesignated as Article 39.145, Code of Criminal Procedure, and amended to read as follows:

Art. 39.145. DISCOVERY: ADDITIONAL PROVISIONS APPLICABLE TO DISCLOSURES BY STATE OR DEFENDANT. (a) ~~[(b)]~~ On a party's request made not later than the 30th day before the date that jury selection in the trial is scheduled to begin or, in a trial without a jury, the presentation of evidence is scheduled to begin, the party receiving the request shall disclose to the requesting party the name and address of each person the disclosing party may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence. Except as otherwise provided by this subsection, the disclosure must be made in writing in hard copy form or by electronic means not later than the 20th day before the date that jury selection in the trial is scheduled to begin or, in a trial without a jury, the presentation of evidence is scheduled to begin. On motion of a party and on notice to the other parties, the court may order an earlier time at which one or more of the other parties must make the disclosure to the requesting party.

(b) ~~[(g)]~~ Nothing in Articles 39.14 and 39.142 ~~[this article]~~ shall be interpreted to limit an attorney's ability to communicate regarding his or her case within the Texas Disciplinary Rules of Professional Conduct, except for the communication of information identifying any victim or witness, including name, except as provided in Articles 39.14(e) ~~[Subsections (e)]~~ and (f), address, telephone number, driver's license number, social security number, date of birth, and bank account information or any information that by reference would make it possible to identify a victim or a witness. Nothing in this subsection shall prohibit the disclosure of identifying information to an administrative, law enforcement, regulatory, or licensing agency for the purposes of making a good faith complaint.

(c) Articles 39.14 and 39.142 do ~~[(n) This article does]~~ not prohibit the parties from agreeing to discovery and documentation requirements equal to or greater than those required under those articles ~~[this article]~~.

SECTION 5. The changes in law made by this Act apply only to the prosecution of an offense committed on or after September 1, 2025. The prosecution of an offense committed before September 1, 2025, 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 September 1, 2025, if any element of the offense occurs before that date.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2025.

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