

FANNIN COUNTY CRIMINAL DISTRICT ATTORNEY DISCOVERY POLICY

effective July 1, 2014

It is the policy of the Fannin County Criminal District Attorney's Office to conduct discovery as openly as possible, consistent with effective advocacy of the case, and in compliance with applicable law and the protection of the victim and other concerned persons.

This policy is intended to provide a framework of basic rules and guidelines for discovery and is intended to comply with the January 1, 2014 codification of the discovery law outlined in Article 39.14, Texas Code of Criminal Procedure.

EXCULPATORY EVIDENCE

The District Attorney's Office has a continuing obligation to reveal exculpatory evidence to the defense before, during, and after trial. The obligation to reveal exculpatory evidence overrides any restrictions on disclosure contained within this policy. The prosecutor shall disclose to the defense 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.

SUPERVISION OF DISCOVERY

A prosecutor should review items of discovery prior to release to determine if the materials contain information that is confidential or privileged by law or should otherwise not be provided to the defense without a court order.

If only a portion of a document, item, or information is subject to discovery, the prosecutor is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. The prosecutor shall inform the defendant that a portion of the document, item, or information has been withheld or redacted.

DOCUMENTATION OF DISCOVERY PROVIDED

The prosecutor shall electronically record or otherwise document any document, item, or other information provided to the defense.

WHO MAY REQUEST OR RECEIVE DISCOVERY

Discovery will be provided within the guidelines set out in this policy, or as soon as practicable thereafter, upon proper request from the attorney of record for a defendant. Request for discovery from any person other than the attorney of record will be denied. As it is common for the District Attorney file to be supplemented between the time period of the office received the case for review and formal charging, generally discovery will not be provided until the District Attorney's Office has made a charging decision.

Non-attorney employees of the defense attorney, such as investigators and paralegals may receive discovery on the defense attorney's behalf with the approval of the prosecutor assigned the case. The District Attorney's Office may require that the defense attorney provide a letter specifying the name of any employee authorized to receive discovery on a case.

Defense attorneys must ensure that all non-attorney employees, investigators, experts, consulting legal counsel or other agent are familiar with, and comply with, the duties, obligations and restrictions outlined in Article 39.14 of the Texas Code of Criminal Procedure, including the duty to redact information prior to dissemination.

Defense attorneys must notify the District Attorney's Office of employees no longer authorized to receive discovery on their behalf.

COPIES TO BE PROVIDED

Subject to the restrictions provided by Section 264.408 Family Code, and Article 39.15 of the Texas Code of Criminal Procedure, after receiving a timely request from the defendant, the prosecutor shall produce and permit for inspection and the electronic duplication, copying, and photographing of any offense reports, 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), or any designated books, accounts, letters, photographs or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state.

The prosecutor may provide the defendant electronic duplicates of any documents or other information.

This policy does not authorize the removal of the documents, items, or information from the possession of the state, and any inspection shall be made in the presence of a representative of the state.

Copies are to be provided through the District Attorney's Office. The attorney of record may only request and receive the specific report related to the offense for which the defendant is indicted or charged absent compelling circumstances.

The District Attorney will provide copies of offense reports to the attorney of record, upon proper request and in accordance with all other guidelines and restrictions. This may be done by e-mail or by copying the information to a flash drive provided by the defense attorney. If provided by e-mail, it is the responsibility of the defense attorney receiving discovery to have an Adobe Acrobat or other pdf reader software installed in order to open and view the document.

Offense reports, documents, and other information will be provided to the defense in un-redacted form, except for any privileged information, partially discoverable information, or information that would compromise the safety or well-being of victims or witnesses.

SPECIFIC RESTRICTED ITEMS

- 1) Grand Jury testimony (always requires a court order);
- 2.) Victim Impact Statements;
- 3.) Psychological Profiles (except that of the defendant);
- 4.) Information that would compromise the safety or well-being of victims or witnesses.
- 5.) Information privileged by state or federal law.
- 6.) Criminal Histories (view only).

EXCEPTIONS UNDER THE OPEN RECORDS ACT

Any and all information released by the District Attorney's Office to a defendant's attorney, or the defense attorney designee, in the course of criminal discovery is being released for the sole purpose of providing discovery in accordance with the Texas Code of Criminal Procedure and the standing or specific discovery orders of the Travis County District Courts. Disclosure of this information does not constitute a voluntary disclosure for purposes of the Texas Open Records Act and does not foreclose any governmental entity's assertion of the exceptions to required disclosure under the Act with respect to information released through criminal discovery.

TIME OF DISCOVERY: ADULT OFFENDERS

A request for discovery may be made after indictment in all cases where the defendant is formally charged. The District Attorney's approval is required to release discovery in any violent case prior to indictment.

TIME TO RESPOND:

Once a timely and proper response for discovery is received by the District Attorney's Office, the requested offense reports, documents, and other information will be made available as soon as practicable. Offense reports should be made available within ten (10) business days unless compelling circumstances require more time to respond. If more time is necessary to respond to a requested offense report, the defense attorney should be notified of the delay and the reason therefore.

TIME OF DISCOVERY: JUVENILE OFFENDERS:

NON-VIOLENT OFFENSES:

Copies of offense reports will be provided to the defense attorney at the initial detention hearing if the report is available. Defense attorneys may keep the report only if it has been properly redacted.

Copies of offense reports may be attached to the petition at the time of filing if the report is available. A request for discovery may be made at the time of the filing of the petition.

VIOLENT OFFENSES:

Defense attorneys will be allowed to view and use printed copies of the offense reports in violent cases, to the extent the reports are available to the State, at the initial detention hearing, but may only obtain a copy of the offense report as provided herein.

A request for discovery may be made at the time of the filing of the petition in cases in which the respondent is charged with a violent offense. The District Attorney's approval is required to release discovery in any violent case prior to the filing of the petition.

For the purposes of these time guidelines, the term "violent offense" includes, but is not limited to, all offenses contained in Chapters 19, 20, 20A, 21, 22, 25, 29, and 71 of the Texas Penal Code as well as the offenses of arson, obstruction or retaliation, interference with an emergency phone call, stalking, sexual performance by a child, possession or promotion of child pornography, intoxication assault, intoxication manslaughter, failure to stop and render aid, burglary with intent to commit any offense other than theft, compelling prostitution, felony promotion or aggravated promotion of prostitution, or an attempt to commit or conspiracy to commit any of these offenses.

NOTE: In all cases where a respondent is charged with violent and non-violent offenses stemming from the same incident, the time restrictions applicable to violent offenses shall apply to discovery requests.

DEFENSE ATTORNEYS ACCEPTANCE OF RESPONSIBILITY

The last two pages of this policy contain a user agreement listing the responsibilities and obligations attorneys must agree to and abide by pursuant to this policy and in compliance with Article 39.14 Texas Code of Criminal Procedure (as amended, effective Jan.1, 2014). This agreement is part of the discovery policy and must be read and signed by each defense attorney prior to receiving electronic discovery. All signed copies will be kept on file in the District Attorney's Office.

A defense attorney that violates any provision of this discovery policy will face any and all sanctions allowed by law.

