

## **33<sup>rd</sup> and 424<sup>th</sup> JUDICIAL DISTRICT STANDING DISCOVERY ORDER FOR CRIMINAL CASES**

This is a standing order of the 33<sup>rd</sup> and 424<sup>th</sup> Judicial District Courts that applies in every criminal case in which a defendant is represented by counsel and is charged by indictment or information filed in the 33<sup>rd</sup> and 424<sup>th</sup> Judicial District Courts. The State currently has an “open file” policy and this standing order is not intended to interfere with that policy. However, in the event that counsel for the State and Defense cannot agree as to what discovery is to be produced, the State, through the office of the prosecuting attorney, is ordered to produce and make available to the defendant or the defendant’s attorney, for inspection and the electronic duplication, copying and/or photographing of the information, evidence, and materials identified in this order. These items shall be produced at the office of the prosecuting attorney or, at the election of the prosecuting attorney, at an appropriate law enforcement agency.

Nothing in this order permits a defendant or his attorney to copy, photograph, duplicate, or otherwise reproduce any property or material described in Tex. Code Crim. Proc. Art. 39.15.

With the stated limitations, **IT IS THEREFORE ORDERED**, that the State of Texas is to have the following materials and information available to the defense for inspection, electronic duplication, photographing, and/or copying:

1. Written statements of the defendant as defined in Tex. Code of Crim. Proc. Art. 38.22.
2. Any tangible evidence known to the prosecuting attorney which indicates the defendant is incompetent to stand trial, or was insane at the time of the offense, as those terms are defined in the Tex. Code Crim. Proc. and Tex. Penal Code.
3. Tangible things (except the work product of the prosecuting attorney’s office, law enforcement agencies, or persons or entities assisting in the investigation of the case at the request of law enforcement agencies or the prosecuting attorney’s office; or written communications between the State or any of its agents or representatives or employees), including:
  - a. Offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers;

- b. Documents or papers belonging to the defendant relevant to the offense alleged in the charging instrument;
  - c. Books, accounts, and letters relevant to the offense alleged in the charging instrument;
  - d. Photographs, diagrams, drawings, plats, maps, or digital recordings of the scene or events of the alleged offense;
  - e. Impressions of any fingerprints, palm prints, foot prints, or tire tracks, which were obtained from the scene of, or any object involved in the alleged offense;
  - f. Weapons or instruments believed to have been used by the defendant in the commission of the alleged offense;
  - g. Non-controlled substance contraband substances alleged to be in possession of the defendant;
  - h. The results of any chemical or scientific identification or comparison performed by the State in connection with the alleged offense, including a description of items and substances tested, and the conclusions, if any, drawn by the person conducting the test; and
  - i. Video recordings of the victim of the alleged offense which the prosecution will offer under art 38.071 Tex. Code Crim. Proc. And Tex R. Evid. 801(e)(1)(D), shall be made available but not duplicated.
4. Any other evidence or information which: a) is favorable to the defendant and creates a probability of his innocence sufficient to undermine confidence in a contrary finding, or b) that tends to negate the guilt of the defendant or mitigates the offense.
5. A list of all witnesses, whose names do not appear in discovery material provided, who will be called by the State as witnesses in its case in chief on guilt/innocence at the trial of the case, at least 10 days prior to the date the trial is set to commence, unless good cause shown.
6. A summary of the criminal history of the defendant regarding any convictions for felonies or crimes of moral turpitude. Such summary shall include the County and State of conviction, the date of conviction, and the title of the offense of conviction.
7. Agreements, if any, known to the prosecuting attorney, between the State or other governmental agency and any witness, not to prosecute the witness for criminal acts or to only prosecute the witness for a lesser

offense, or to abandon possible enhancement paragraphs or to not seek special findings such as an affirmative Deadly Weapon finding, or to recommend a particular punishment in the disposition of a criminal case.

Items 1, 2, 3, and 4 are to be produced as soon as practicable following the date counsel submits a letter of representation or the date counsel is appointed but no later than the date set for arraignment of the defendant. In the event that these items cannot be produced at arraignment, the State shall inform the Court as to what particular items cannot be produced, a good faith estimate as to when these items will be produced, and an explanation as to why the production delay is needed.

Item 6 and 7 are to be produced as soon as practicable after the plea bargain deadline date, but not later than the conclusion of the direct testimony of that witness.

IT IS FURTHER ORDERED that, on a motion of a party to disclose witnesses pursuant to Tex. Code Crim. Proc. 39.14(b), both the State and Defense shall disclose to the other the name and address of each person the party may use at trial to present evidence under Tex. R. Evid. 702, 703, and 705, based on this Order and without the necessity of a hearing before the Court.

The State's prosecuting attorney shall give notice of the State's intent to introduce any evidence of the prior criminal record of the defendant, his general reputation, his character, and opinion regarding his character, the circumstances of the offense for which he is being tried, and any other evidence of an extraneous offense, crime or bad act shown to have been committed by the defendant or for which he could be held criminally responsible, and which the State feels would possibly be admissible in the trial of this case, either in its case in chief or on the issue of punishment. Such information shall be provided to the Defendant's attorney no later than ten (10) days prior to the beginning of jury selection in a jury case or no later than ten (10) days prior to the time of the calling of the first witness in a nonjury case. Further, such information shall be provided to the Defendant's attorney in the manner indicated above in compliance with Rule 404(b) and Rule 609(f) Tex. R. of Evid., and 37.07 3 (g) Tex. Code of Crim. Proc., unless good cause shown.

This discovery order imposes a continuing duty to discover, disclose, and make available the materials and information which are the subject of the order. The

District Attorney shall advise the defendant's attorney of any new evidence coming into his possession or knowledge, which would be subject to discovery under this Order, and to then permit appropriate inspection of the same. The District Attorney shall exercise reasonable diligence in complying with this Order.

Nothing in this order shall authorize the removal of evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.

IT IS ORDERED that the defendant, the attorney representing the defendant, or their agents, may not disclose to a third party any documents, evidence, materials, or witness statements received under this order unless: a) the Court orders the disclosure, or b) the material produced pursuant to this order has already been publically disclosed. An attorney representing the Defendant or their agents may allow a defendant, witness, or prospective witness to view the evidence produced pursuant to this order if the evidence is redacted to remove a person's address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the documents. An attorney representing the Defendant or their agents may not allow a defendant, witness, or prospective witness to make copies of the information provided under this discovery order, unless it is a copy of the witness' own statement.

The matters which are the subject of this order shall be produced without the filing of a motion for discovery. Any motion requesting disclosure of materials covered by this order will be denied in its entirety without a hearing.

Signed on this the July 7, 2015.



J. Allan Garrett  
Judge Presiding  
33<sup>rd</sup> Judicial District



Evan Stubbs  
Judge Presiding  
424<sup>th</sup> Judicial District