

SUBJECT: Requiring courts to order discovery in criminal cases.

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Denny, Hodge, Pena, Reyna
0 nays
3 absent — Escobar, P. Moreno, Raymond

WITNESSES: For — None
Against — None
On — J.W. Howeth

BACKGROUND: Code of Criminal Procedure (CCP), art. 39.14(a) permits a court to order the state to produce evidence in a criminal action upon a proper motion of the defendant and notice to other parties. Upon a showing of good cause by the defendant, the court may order the state to produce any documents, papers, written statements of the defendant, books, accounts, letters, photographs, objects, or other tangible items not privileged that are material to the defendant's case. The court cannot order the State to produce work product of prosecutors or of their investigators.

DIGEST: HB 969 would amend CCP, art. 39.14(a) to require rather than permit courts to produce evidence upon a motion of the defendant showing good cause.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: By removing a judge's discretion to deny discovery of evidence the defendant discovery, this bill would help expedite cases and ensure that the defendant could obtain all discoverable material allowed by law. By ensuring that abuse of the discovery rule would be stopped before it

happens, HB 969 would offer those accused of a crime greater access to justice and a fair trial

OPPONENTS
SAY:

No evidence suggests that under current law judges abuse the discretion to allow discovery. Moreover, removing this discretion could lead to more damaging changes, such as eliminating the requirement that the defense show good cause or provide notice before discovery is ordered. Such changes could be particularly harmful to the prosecution, which cannot appeal such rulings, while the defense may appeal certain discovery rulings after conviction. As it is, prosecutors are at a disadvantage because they do not have access to much of the defense's evidence.

OTHER
OPPONENTS
SAY:

This bill would not go far enough to ensure that those accused of a crime get a fair trial. Further changes are needed to allow the defendant greater access to the prosecution's evidence, including police reports and witness statements.