

TRAVIS COUNTY DISTRICT ATTORNEY'S OFFICE

DISCOVERY POLICY - CRIMINAL CASES

effective December 1, 2008

It is the policy of the 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, but still allow for maximum professional discretion for the prosecutor handling the case.

Exculpatory Evidence

The District Attorney's Office has a continuing obligation to reveal exculpatory evidence to the defense. This obligation overrides restrictions on disclosure contained within this policy.

In the event that information or evidence that would otherwise be restricted from disclosure by this policy, or any law, contains exculpatory information, a prosecutor shall inform a supervisor prior to disclosure so that the proper method for disclosure may be determined.

Supervision of Discovery

No discovery is to be given in any case without a prosecutor first reviewing the file to determine if the file contains information or material that is confidential by law or should otherwise not be revealed to the defense.

Documentation of Discovery Provided

When discovery is given, it must be documented as to date, items given and the names of the persons giving and receiving discovery. This may be accomplished by requiring that the defense attorney sign a detailed discovery receipt, or by District Attorney staff making a notation in the file.

Who May Request or Receive Discovery

Discovery will be provided within the time guidelines set out in this policy upon proper request from the attorney of record for a defendant. Requests for discovery from any person other than the attorney of record will be denied.

Non-attorney employees of the defense attorney, such as investigators or 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 notify the District Attorneys Office of employees no longer authorized to receive discovery.

Time of Discovery – Cases Involving Adult Offenders

1. Non-violent offenses:

A request for discovery may be made no sooner than five (5) business days after arrest in cases where the defendant is charged with a non-violent offense, and IS currently in custody.

No request is required on cases that will be handled through the missile or rocket docket programs. In those cases a copy of the report, along with a pre-indictment plea offer, will automatically be forwarded to the defense attorney in accordance with the timelines of those programs.

A request for discovery may be made no sooner than ten (10) business days after arrest in cases where the defendant is charged with a non-violent offense, and IS NOT in custody.

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

2. Violent offenses: For purposes of these time guidelines, this term includes all offenses contained in Title 5 and Chapters 25, 29 and 71 of the Texas Penal Code, as well as the specific offenses of arson, obstruction or retaliation, interference with an emergency telephone 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 the intent to commit any offense other than theft, or an attempt to commit or conspiracy to commit any of these offenses.

A request for discovery may be made after indictment in all cases where the defendant is charged with a violent offense.

A Division Director's approval is required to release discovery in any violent case prior to indictment.

3. Time to Respond:

Once a timely and proper request for discovery is received by the District Attorney's Office, the requested documents will be made available within ten (10) business days, unless compelling circumstances require more time to respond.

If more time is necessary to respond, the defense attorney will be contacted and the reason for the delay explained within the ten day time period.

Time of Discovery – Juvenile Cases

1. For non-violent offenses (juvenile cases):

Copies of offense reports will be provided to the defense attorney at the initial detention hearing if one is available.

A printed copy of the offense report will be attached to the petition at the time of filing, if one is available.

A request for discovery may be made at the time of the filing of the petition if the offense report was unavailable at the detention hearing or if the offense report was not attached to the petition at the time of filing.

2. Violent offenses (juvenile cases): For purposes of these time guidelines, this term includes all offenses contained in Title 5 and Chapters 25, 29 and 71 of the Texas Penal Code, as well as the specific offenses of arson, obstruction or retaliation, interference with an emergency telephone 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 the intent to commit any offense other than theft, or an attempt to commit or conspiracy to commit any of these offenses.

As is the practice as of November 2008, defense attorneys will be allowed to view and use printed copies of 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 all cases in which the defendant is charged with a violent offense.

A Division Director's approval is required to release discovery in any violent case prior to the filing of the petition.

3. Time to Respond (juvenile cases):

Once a timely and proper request for discovery is received by the District Attorney's Office, the requested documents will be made available within ten (10) business days, unless compelling circumstances require more time to respond.

If more time is necessary to respond, the defense attorney will be contacted and the reason for the delay explained within the ten day time period.

Copies to be Provided

Prosecutors will provide copies of the following to the attorney of record upon request and within the time guidelines set out in this policy in all cases: Search warrants and PC affidavits related to the charged offense, results of scientific testing, autopsy reports, and any statement or confession by the defendant.

Copies of offense reports will be provided using the process described in the following section of this policy.

Copies of Offense Reports:

Absent compelling circumstances, prosecutors will give copies of offense reports in all criminal cases upon request of the attorney of record within the time guidelines set out in this policy.

Any decision to withhold an offense report from discovery must first be approved by the District Attorney, the First Assistant, or the Division Director that supervises the prosecutor on the case.

Copies are to be provided through the District Attorney's Office. Defense attorneys will not be permitted to make their own copies using the copiers outside the courtrooms.

The attorney of record may only request and receive the specific report related to the offense for which the defendant is indicted or charged.

Sensitive information such as victim contact information or the identity of informants should be redacted prior to disclosure.

In an effort to conserve paper and other resources necessary to make paper copies, the District Attorney's Office will provide copies of offense reports to the attorney of record, upon proper request and in accordance with all other time guidelines and restrictions, in digital format. This may be done by email or by copying the file(s) to a flash drive provided by the defense attorney.

All requests for copies of offense reports must be made in the manner specified by the District Attorney. The request must contain a secure email address accessible only by the defense attorney and/or authorized staff.

In response to a request, the District Attorney's Office may provide the offense report to the defense attorney by email. The report will be attached to the email in pdf format. 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 attachment.

A copy of the request form and the outgoing email will be preserved by the District Attorney's Office as documentation of the response to the request for the report.

How Other Discovery Will be Provided

Discovery of other items may be conducted as follows: (1) the prosecutor may give discovery in person by orally conveying the information to the defense attorney, or (2) after the file is reviewed by the prosecutor, the defense attorney may be allowed a reasonable time to examine the file - or parts of it - and take notes, including use of laptops and recording devices, under the supervision of the prosecutor.

Specific Restricted Items

The following items shall not be revealed to the defense without the specific approval of a Division Director and the First Assistant or District Attorney: (1) Grand jury testimony (except the testimony of the defendant or unless ordered by the Court), (2) Victim impact statements, (3) psychological profiles (except that of the defendant), and (4) any information that would compromise the safety or well-being of victims or witnesses.

As a general rule, the following items are not shown or given to the defense, although the contents or information may be orally summarized for them within the discretion of the prosecutor on the case: (1) attorney work product (including work product of our agents), (2) victim contact sheets, and (3) reports of expert witnesses. The documents can be shown to the defense for a good reason.

Witness Statements

The defense is not entitled under the law to see witness statements or video/audio recorded witness interviews prior to trial and, therefore, has no legal right to obtain copies.

Prosecutors, at their discretion, may read to or allow defense attorneys to read witness statements or view/hear recorded interviews and take notes, or a prosecutor may allow copies of statements or recorded interviews to be provided to the defense attorney.

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's designee, in the course of criminal discovery is being released for the sole purpose of providing criminal 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.

Defense Attorney Acceptance of Responsibility for Acting in Accordance With Policy

The last two pages of this policy contain a user agreement listing the responsibilities defense attorneys must agree to and abide by in order to receive copies of reports through discovery. This list of responsibilities is considered to be part of the discovery policy, and must be read and signed by each defense attorney prior to receiving copies of offense reports through discovery. All signed copies of this agreement will be kept on file in the District Attorney's Office.

A defense attorney that violates any provision of this discovery policy may be denied access to copies of reports and other discovery for all clients and cases for a period of time to be determined by the District Attorney. In the event that such a sanction is imposed, the defense attorney will be notified in writing by the District Attorney.

User Agreement for Defense Attorneys Receiving Copies of Offense Reports From the Travis County District Attorney's Office

Responsibilities of Attorneys Receiving Discovery

In exchange for providing copies of offense reports and other documents through discovery, the District Attorney's Office expects all defense attorneys receiving discovery to be aware of the following restrictions and responsibilities. This list of responsibilities is incorporated into and considered to be part of the District Attorney's Discovery Policy.

A defense attorney may not make a request for or receive a copy of an offense report unless the attorney has been formally retained or appointed to represent the defendant in that case.

A defense attorney may not publicly disseminate or otherwise disclose any report, statement, photograph or other evidence obtained through discovery to any person other than their co-counsel, investigator, or other person necessary to the defense of the case.

A defense attorney may not take anything from the District Attorney's file, and may not photocopy anything from the District Attorney's file.

A defense attorney may not make additional copies of reports or statements for anyone other than co-counsel without the written permission of the prosecutor in that case. The District Attorney's Office may request that all copies be returned to the District Attorney at any time.

If an offense report is provided to a defense attorney by email, the defense attorney may not forward that email to anyone other than co-counsel or a necessary employee that has been advised of all restrictions on dissemination of reports pursuant to this policy.

A defense attorney may show or read an offense report and witnesses statements provided through discovery to the client, but under no circumstances may a defense attorney or any person working for the defense attorney provide copies of offense reports or statements to the client.

A defense attorney, or any person working for the attorney, may not provide victim or witness contact information received through discovery to the attorney's client, the client's family, or any other non-expert witness.

All reports and other documents provided to a defense attorney pursuant to this policy are for criminal discovery only and shall not be considered to be part of the client's file. Defense attorneys should advise their clients that reports and documents provided through discovery are not available to them. A defense attorney may not surrender or otherwise provide copies of these documents to a client or former client in the event that the client or former client requests a copy of their file.

Defense attorneys should be aware that the District Attorney's Office does not waive any claim of work product privilege or any exception under the Open Records Act by the disclosure of

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discovery under this policy, and specifically intends to protect from disclosure all records covered by any exception in the law.

All defense attorneys are responsible for informing their employees or agents of the restrictions contained within this policy with respect to the dissemination of information contained in offense reports and other criminal discovery provided by the District Attorney’s Office, and seeing that those employees and agents abide by the restrictions.

All defense attorneys receiving discovery should be aware that there may be documents or other evidence available for viewing or examination in the District Attorney’s file or possession for which copies are not provided. All defense attorneys should request an opportunity to view the file and should not rely solely on the copies that are provided in the course of discovery.

Defense attorneys should also be aware that, in some cases, there may be supplemental information added to an offense report after they obtain a copy of the report through discovery. Unless the supplemental information is exculpatory in nature, it is the defense attorney’s responsibility to request an updated report prior to trial.

Any defense attorney that violates this policy or any of these responsibilities may be denied access to copies of reports and other copied materials for all clients and cases for a period of time determined by the District Attorney. In the event that such a sanction is imposed, the defense attorney will be notified in writing by the District Attorney.

I have read and understand the District Attorney’s Discovery Policy and my responsibilities under the policy, and I agree to abide by it. I also understand the possible sanctions which may be imposed for violating provisions of this policy.

Signature: _____ Date: _____

Printed Name of Defense Attorney: _____

Mailing address: _____

Phone number: _____ Fax number: _____

Secure email address: _____