

Wednesday, February 27, 2013  
Contact: Janis Monger, Communications Director  
TEXAS APPLESEED 512/ 296-8043

FOR IMMEDIATE RELEASE

**Texas Defender Service, Texas Appleseed Release Criminal Discovery Report  
Growing Call to Prevent Wrongful Convictions by Improving Texas'  
Discovery Laws**

AUSTIN, TX – As state lawmakers move to improve Texas' criminal discovery statute to reduce the risk of wrongful convictions, Texas Defender Service and Texas Appleseed today released a timely report with new findings on Texas' discovery practices and recommendations for reform.

“Texas' discovery statute falls short of the best practices in criminal discovery adopted by the American Bar Association (ABA) and implemented in a majority of states,” said Kathryn Kase, Executive Director, Texas Defender Service.

“While some district attorney's offices already recognize the shortcomings in Texas' criminal discovery statute and have moved towards open file discovery, others provide little pre-trial discovery and some even require defendants to waive important statutory rights in exchange for open file discovery,” Kase said. “This lack of uniformity impacts access to justice.”

The new report, *Improving Discovery in Criminal Cases in Texas*, is based on an analysis of discovery policies solicited from 43 district attorney's offices across the state and interviews conducted by pro bono partner Locke Lord LLP in Dallas. The report recommends Texas' discovery statute (Code of Criminal Procedure, Article 39.14) be amended to provide these ABA best practices:

- Automatic access to discovery;
- Open file discovery that includes access to police reports, witness statements, expert reports, and criminal histories;
- Reciprocal discovery obligations for the defense within the boundaries of the defendant's constitutional rights;
- Defined timelines for initiating discovery; and

- An explicit continuing obligation to disclose.

Texas Applesseed Board member David Gerger said, “We all share in interest in improving the system. After all, a wrongful conviction is a loss for everyone: an innocent person is convicted; the guilty party goes free; the victim suffers; and it can be very costly for the State.”

Defense attorney Jim Leitner, who retired last year as First Assistant District Attorney for Harris County, believes that the time has come for Texas to adopt robust criminal discovery. “After we made changes in Harris County that expanded access to our case files, most prosecutors in our office found their cases moved more efficiently and smoothly. Open file discovery is not only workable in Texas, it makes the system more efficient and more fair.”

Houston defense attorney and former prosecutor Wendell Odom agreed. “Requiring prosecutors to share their evidence pre-trial, while also making the defense perform some pretrial disclosure, will strengthen the criminal justice system in Texas. There is reciprocal discovery in the federal system, and it has worked well for both prosecution and defense.”

“Recent high-profile exonerations of wrongfully convicted individuals like Michael Morton of Williamson County, who spent decades behind bars for a murder he did not commit, have put in sharp relief the need for a discovery statute that gives all Texans an equal opportunity to examine the evidence against them to ensure a just disposition of their case,” said Rebecca Bernhardt, Policy Director with Texas Defender Service. “Open file discovery will go a long way toward reducing the likelihood of wrongful convictions.”

Anthony Graves, exonerated in 2010 after 18 years of incarceration —12 of them on Death Row—after being wrongfully convicted of murder, said no information should be withheld from the defense that could help clear the name of the accused. “My experience is everyone’s worst nightmare. The State should do everything it can to make sure that what happened to me never happens to another person,” Graves said.

The report released today indicates that Texas’ discovery statute is out of step with most other states. In contrast to Texas’ discovery requirements:

- 84% of states do not require a court order before the prosecution must disclose;
- 92% of states place an explicit continuing obligation to disclose on prosecutors and the defense;
- 68% of states require pre-trial disclosure of expert reports;
- 62% of states require pre-trial disclosure of witness statements;
- 98% of states require reciprocal or mutual discovery from the defense; and
- 62% of states require the pre-trial disclosure of the defendant's full criminal history.

Currently, Texas prosecutors' sole disclosure obligation is to provide defense attorneys with evidence that tends to negate the guilt or mitigate the punishment of the accused. To be entitled to further discovery, defense attorneys must file a motion with the court showing "good cause."

For more information, contact:

**Rebecca Bernhardt, Policy Director**

**Texas Defender Service**

[o] 512-320-8300

[c] 512-650-6501

<mailto:rbernhardt@texasdefender.org>

**Kathryn M. Kase, Executive Director**

**Texas Defender Service**

[o] 713-222-7788

[c] 713-444-2044

<mailto:kmkase@texasdefender.org>

**David Gerger, Board member, Houston attorney**

Texas Appleseed [o] 713-713-224-4400

**Jim Leitner, former First Assistant District Attorney, Harris County  
(2009 – 2012)**

[o] 281-507-9558

<mailto:leitnerjimlaw@gmail.com>

**Wendell Odom, Jr., Attorney (Houston)**  
[o] 713-223 5575