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Michael Morton Act Working After First Year of Implementation Texas Appleseed, Texas Defender Service Report Examines Policies & Practices

Landmark legislation passed in the last Texas Legislature is working after its first year of implementation, despite some understandable initial shortcomings and confusion, according to two Texas nonprofit organizations involved in civil and criminal justice reform. The Michael Morton Act provides a statutory right for defendants in criminal prosecutions to have access to information in prosecutor files and law enforcement reports.

"Towards Transparent Justice: The Michael Morton Act's First Year," was released today by Texas Appleseed and Texas Defender Service at a Capitol news conference. The law was passed in 2013 by the Texas Legislature and went into effect on January 1, 2014. It's named for Michael Morton, who was exonerated and freed after serving 25 years in prison for a crime he did not commit. Throughout his case, prosecutors withheld information collected during the original investigation that pointed towards Morton's innocence. Such prosecutorial misconduct has been a significant contributor to wrongful convictions, and an issue in several high-profile Texas exonerations.

The report says there is no need for new legislation to amend the current law. However, it identifies a number of pervasive issues with the enactment's implementation including the wrongful redaction and withholding of information, and delays in the provision of discovery. The report notes, however, that prosecution offices were reworking their policies even during the process of collecting the policies.

"The passage of further amendments to Article 39.14 during the 84th legislative session, would likely cause more confusion and stymie existing efforts to appropriately implement and comply with the 2013 law," the report states.

Appleseed & TDS filed requests with every county and district attorney's office in Texas to obtain the written policies each office used for implementing the Morton Act's requirements. The organizations evaluated those policies against the requirements stated in the law.

"A law that changes processes in every single criminal case in all 254 counties will have a steep learning curve," said Mary Schmid Mergler, of Texas Appleseed. "It's been very encouraging to see every segment of the criminal justice system appreciate the need for these changes and really strive to make it work quickly."

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“Some predicted that the Michael Morton Act would unduly burden prosecutors, but our findings suggest that most prosecution offices have made the transition to a more open and transparent discovery process,” Kase said. “Criminal discovery is an important key to ensuring that the constitutional rights of those charged with crimes are protected. As prosecutors and law enforcement become more comfortable with the Act’s requirements, we have hope that the risk of wrongful convictions will decrease.”

The report recognizes that a number of offices have made great strides towards increasing transparency in the criminal discovery process. El Paso, and Tarrant County District Attorney offices were recognized among larger, urban counties for their efforts to make discovery available to defense counsel via an online system and for Tarrant County’s practice of making this materials available at an early point in the proceedings against the accused. Many smaller jurisdictions have also integrated the discovery process into their case screening procedures, thereby minimizing the time invested in each case and making materials available to the defense in a timely manner.

The report calls for continued training and education for law enforcement agencies to see that they are fully complying with the Act’s requirements. The report recognized the Travis County District Attorney’s office for its work with the Austin Police Department.

A defendant’s right to the information in a prosecutor’s file was spelled out in a 1963 U.S. Supreme Court case, *Brady v. Maryland*, and subsequent rulings. The case law can be vague, however. Even without intentional misconduct found in some cases, different levels of discovery existed in Texas counties. Uniform open file discovery is recognized as helping the criminal justice system to operate in a fair and efficient manner.

"Towards Transparent Justice," is the followup to a report the two organizations issued in 2013, "Improving Discovery in Criminal Cases in Texas: How Best Practices Contribute to Greater Justice."

The Michael Morton Act was passed as Senate Bill 1611 by Sen. Rodney Ellis and Sen. Robert Duncan. Rep. Senfronia Thompson was the principal sponsor in the House. It was signed into law by then-Gov. Rick Perry.

Texas Appleseed’s mission is to promote social and economic justice for all Texans by leveraging the skills and resources of volunteer attorneys and other professionals to identify practical solutions to difficult systemic problems. Texas Defender Service is a nonprofit law firm that works for a better, more just criminal justice system, particularly in the state’s administration of capital punishment.

Locke Lord LLP, a Texas law firm, also worked on the report as a pro bono partner, as it did in the earlier report.

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The report, “Towards Transparent Justice,” is available in .pdf format at:

http://www.texasappleseed.net/index.php?option=com_content&view=article&id=135&Itemid=309

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