

IN THE COURT OF CRIMINAL APPEALS OF TEXAS
No. PD-0932-25

Herbert Wayne Moten,
Appellant,

v.

The State of Texas,
Appellee.

On Appeal from Navarro County
No. 10-24-00183-CR

**BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION
OF TEXAS AND AMERICAN CIVIL LIBERTIES UNION IN SUPPORT
OF APPELLANT**

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INTERESTS OF *AMICI CURIAE*

The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan organization dedicated to defending the principles of liberty and equality embodied in the federal and state constitutions. The ACLU of Texas is the Texas affiliate of the national ACLU. It has thousands of members and supporters across the State and works with communities, at the State Capitol, and in the courts to fulfill the promises of the U.S. and Texas Constitutions for every Texan, with no exceptions. From Amarillo to Brownsville and Beaumont to El Paso, we believe in a Texas that works for all of us—a Texas where each person has an equal say in the decisions that shape our future and everyone can build a good life. *Amici* have an interest in this case because they have long advocated for fair processes for those charged with crimes, including through robust discovery that allows a defendant to know the evidence related to their case. *Amici* are also committed to preserving and protecting the due process rights established in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny.

INTRODUCTION & SUMMARY OF ARGUMENT

Just two years ago, this Court definitively interpreted the term “state” in Article 39.14(a) of the Code of Criminal Procedure. That provision, as amended by the Michael Morton Act, requires disclosure to a criminal defendant of certain materials “that are in the possession, custody, or control of the state or any person

under contract with the state.” Applying traditional tools of statutory interpretation, the Court held that “‘state’ means exactly what one would think it means—the ‘State of Texas.’” *State v. Heath*, 696 S.W.3d 677, 694 (Tex. Crim. App. 2024).

Now, for the second time in as many years, the State Prosecuting Attorney asks this Court to revisit its decision. Leaning on policy arguments, the Prosecuting Attorney insists that this Court should re-interpret “state” in Article 39.14(a) to mean something less—far less—than the literal State of Texas. Maybe “state” could be construed to mean just the prosecutor’s office? *See* Appellee’s Br. at 7. Or maybe “state” could be a sort of legislative shorthand for a carefully curated selection of law enforcement officials: prosecutors, plus enforcement personnel who “investigat[ed], collect[ed] evidence, perform[ed] searches, and participat[ed] in a suspect’s arrest,” but *not* those who jailed the suspect? *See id.* 56, 61–62. These arguments are untethered from both the holding of *Heath* and the text of Article 39.14, and this Court should reject them.

For starters, the Prosecuting Attorney and its *amici* have directed their arguments to the wrong branch of government. Because the Legislature is well-positioned to address any problems it perceives with judicial interpretations of statutes, *stare decisis* principles apply especially strongly to recent decisions interpreting legislation. That is the situation here. *Heath*’s interpretation of Article 39.14(a) is sensible and workable. If the Prosecuting Attorney and its *amici* disagree,

they have a simple recourse: ask the Legislature to amend the law. There is no good reason to knock on the courthouse door—again and again—to ask this Court to construe a single word—“state”—to mean other words found nowhere in the statute. That’s not this Court’s job.

But even if this Court were to revisit *Heath*’s interpretation of “state,” it should not accept either Appellee’s primary proposal (that “state” means the prosecutor) or its backup proposal (that “state” means some, but not all, law enforcement personnel who interacted with the defendant). The text and structure of Article 39.14 rule out the possibility that the provision uses “state” to mean either of those things. And the purpose of the Michael Morton Act equally contradicts both proposals; the Act’s manifest purpose was to expand the universe of discovery materials provided to criminal defendants, yet the Prosecuting Attorney’s proposals would contract that universe. Finally, adopting either of the Prosecuting Attorney’s proposals would render a related provision of Article 39.14 constitutionally inadequate under *Brady v. Maryland* and its progeny.

At a minimum, the term “state” as used in Article 39.14 (any redefinition of which should come from the Legislature and not this Court), must assess a government agency’s role in a case and relationship to the prosecution, and must not be artificially limited to only some law enforcement.

ARGUMENT & AUTHORITIES

I. This Court should not revisit *Heath* to re-write “state.”

There is no reason for this Court to re-interpret “state” at all. In *Heath*, this Court applied standard tools of statutory interpretation to reach a sensible, and constitutionally adequate, understanding of the term “state” as used in Article 39.14(a). The State Prosecuting Attorney—Appellee here—pressed for a narrower definition, which the Court rejected twice: first in its initial decision, and then again on rehearing. *See Heath*, 696 S.W.3d at 693–94; *State v. Heath*, 707 S.W.3d 135 (Tex. Crim. App. 2024) (mem.). The Court should now, once again, deny this attempt to substitute the State Prosecuting Attorney’s judgment for the Legislature’s.

A. *Stare decisis* counsels against revisiting *Heath*.

Principles of *stare decisis* cut sharply against re-interpreting *Heath*. “The doctrine of *stare decisis* indicates a judicial preference for maintaining consistency with past decisions.” *In re Green*, 713 S.W.3d 843, 853 (Tex. Crim. App. 2025). *Stare decisis* achieves important goals: it “promotes judicial efficiency and consistency, it fosters reliance on judicial decisions, and it contributes to the actual and perceived integrity of the judicial process.” *Hammock v. State*, 46 S.W.3d 889, 892 (Tex. Crim. App. 2001). As a result, this Court does not overrule itself lightly. *See id.*

Revisiting *Heath*, which interpreted a statute, is especially inappropriate because *stare decisis* “has its greatest force in the area of statutory construction.”

Collier v. Poe, 732 S.W.2d 332, 345 (Tex. Crim. App. 1987). “Overruling a case that construes a statute is rare.” *In re Green*, 713 S.W.3d at 854. That’s because “the interests underlying the doctrine of *stare decisis* are at their height for judicial interpretations of legislative enactments upon which parties rely for guidance in attempting to conform to those legislative enactments.” *Busby v. State*, 990 S.W.2d 263, 267 (Tex. Crim. App. 1999). Beyond those reliance interests, a “statute is the creation of the Legislature and should an interpretation of a statute by the courts be unacceptable to the Legislature, a simple remedy is available by the process of legislative amendment.” *Marmon v. Mustang Aviation, Inc.*, 430 S.W.2d 182, 186 (Tex. 1968). If this Court’s *Heath* decision misinterpreted legislative intent or created externalities the Legislature hadn’t anticipated, the Legislature can step in and clarify or otherwise change Article 39.14.

But the Legislature hasn’t done so—and that in and of itself is telling. “When the Legislature meets, after a particular statute has been judicially construed without changing the statute, [this Court] presume[s] the Legislature intended the same construction should continue to be applied to that statute.” *Marin v. State*, 891 S.W.2d 267, 271–72 (Tex. Crim. App. 1994). Following *Heath*, in its most recent session, the Legislature considered an act to clarify the meaning of “state” in Article

39.14(a) but ultimately did not adopt it.¹ Under these circumstances, “there is little reason for the court to reconsider whether its decision was correct.” *Sw. Bell Tel. Co., L.P. v. Mitchell*, 276 S.W.3d 443, 447 (Tex. 2008).

B. Appellee provides no reason to revisit *Heath*.

Even if this case were not subject to the particularly strong version of *stare decisis* that applies after this Court interprets a statute and the Legislature chooses not to amend it, basic *stare decisis* principles would still require Appellee demonstrate the unworkability of *Heath*. See *Hammock*, 46 S.W.3d at 892–93. But Appellee has not done so.

Far from identifying actual cases purporting to demonstrate that the post-*Heath* discovery system is unworkable, Appellee relies on its own concocted scenarios. Appellee contends that it is possible to “*imagine* many connections that state and local government records *could* have to various facts in a case.” Appellee’s Br. at 11 (emphasis added). But it relies almost entirely on these imaginary cases rather than actual court orders that have proved impossible to satisfy. Appellee also invokes a request to the Texas State Board of Plumbing Examiners for customer complaints about a prosecution witness. *Id.* But, once again, that example is purely hypothetical. The same is true for Appellee’s invocation of the “whole host of

¹ See *History for 89(R) SB1124 by Huffman*, Texas Legislature Online, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=89R&Bill=SB1124>. The proposed legislation would not define “state” so narrowly as to mean only the prosecutor, which is what Appellee asks this Court to do.

medical, financial, and immigration records” maintained by the Texas Department of Health and Human Services. *Id.* It’s also true for the “school, driving, tax, and hospital records” of victims and witnesses. *Id.*

In short, *Heath* has not caused the sky to fall. It has instead caused the State Prosecuting Attorney to *imagine* that the sky could fall. That is not a sufficient basis to overcome *stare decisis*.

To the contrary, district attorneys appear to be adjusting to their Article 39.14(a) obligations as construed in *Heath*. A post-*Heath* article in the *Texas Prosecutor* (a publication of the Texas District and County Attorneys Association), written by a Taylor County prosecutor, notes that her office has established procedures for automatic disclosure of 911 calls and predicts that other offices will come up with systems of their own. See Britt Houston Lindsey, *Diligently prepare and be vigilantly aware to avoid exclusion under Heath*, Texas Prosecutor (July-Aug. 2024).² The article also advises district attorney offices on how to comply with *Heath*. The advice includes: “impress heavily upon our allies in law enforcement that the timely disclosure of evidence in a case they have filed with us is critical” and “do[] some documentation and legwork on the front end” of a case to determine whether other agencies are likely to have relevant records. *Id.* These outcomes hardly

² Available at <https://www.tdcaa.com/journal/diligently-prepare-and-be-vigilantly-aware-to-avoid-exclusion-under-heath/>.

reflect the parade of horrors that Appellee suggests *Heath* has wrought. If anything, they suggest that *Heath* is having a salutary effect on prosecutorial practices.

Heath reflects a workable and faithful approach to interpreting Article 39.14(a). The Court should reject Appellee's invitation to judicially re-write the statute and the meaning of "state." That is the Legislature's prerogative.

II. Appellee's proposed re-writings of Article 39.14(a) are untenable.

If the Court nevertheless chooses to revisit *Heath* and re-interpret the word "state" in Article 39.14(a), it should reject both of Appellee's proposals. In Appellee's preferred re-interpretation, "state" would mean just the prosecutor, such that material covered by Article 39.14(a) would have to be disclosed to a defendant only if in the prosecutor's actual possession, custody, or control. *See* Appellee's Br. at 7. In the alternative, Appellee asks the Court to re-interpret "state" to mean a patchwork of people involved in "the prosecution," namely those "that participate in either the investigation or prosecution," *id.* at 8, but not those who jail the defendant. These re-writings of "state" are at odds with several statutory interpretation principles.

A. The text and statutory context of Article 39.14(a) is inconsistent with Appellee's preferred re-writing of "state."

Start with Appellee's preferred approach: that "state" means just the prosecutor. The text and structure of the Michael Morton Act, which amended Article 39.14(a), indicate that the term "state" must mean more than just the prosecution.

The text of Article 39.14(a) squarely forecloses any interpretation of “state” that is limited to the prosecutors who represent the state in criminal cases. That is because the text draws an express distinction between the “state” and “counsel for the state.” Specifically, it requires the disclosure of certain materials “that are in the possession, custody, or control of the state or any person under contract with the state,” but explicitly exempts “the work product of counsel for the state.” Under basic principles of statutory interpretation, the word “state” presumptively has the same meaning in all three places where it appears within that one sentence. *See, e.g., S.C. v. M.B.*, 650 S.W.3d 428, 445 (Tex. 2022). And because “state” must mean the same thing every time, it follows that the terms “state” and “counsel for the state” must mean *different* things.

That basic fact renders Appellee’s view impossible. If “state,” as used in this sentence, meant merely the prosecutor, then the work-product exemption would apply, absurdly, only to “counsel for the [prosecutor].” Under this interpretation, the prosecutor’s work product would *not* be exempt from disclosure under Article 39.14(a). Instead, that exemption would apply only to the work product of counsel (if any) that is hired to represent the prosecutor. That makes no sense.

To avoid that absurd outcome—that the work-product exemption does not protect the work product of prosecutors, but instead the work product of *counsel for* prosecutors—the Appellee would need this Court to read the words “counsel for”

entirely out of Article 39.14(a). But that interpretation would violate a “cardinal rule of statutory interpretation,” the rule of surplusage. *Whole Woman’s Health v. Jackson*, 642 S.W.3d 569, 581 (Tex. 2022) (citation omitted); *see also id.* (collecting cases that hold a court *must not* interpret a statute to render any part of it superfluous). The phrase “counsel for the state” must have a distinct function in the statute. It must mean something besides “the state.”

The structure of the Code of Criminal Procedure, as a whole, confirms that the “state” in Article 39.14(a) cannot be limited to the prosecutor. Throughout the Code, when the Legislature refers to prosecutors, it does so expressly and carefully, using words like “attorney” or “counsel.”³ Plainly, when the Legislature wants a provision to implicate the prosecutor, and only the prosecutor, it knows how to do that. It didn’t do so in Article 39.14(a).

Article 2A.209, which cross-references Article 39.14, is instructive, too. That provision requires “[a] law enforcement agency filing a case with an attorney representing the state” to submit written acknowledgement of disclosure to the attorney of all items “that are required to be disclosed to the defendant . . . under

³ *See, e.g.,* Tex. Code Crim. Proc. art. 28.01 (referring to “State’s attorney”); *id.* art. 28.05 (same); *id.* art. 33.04 (same); *id.* art. 35.25 (same); *id.* art. 36.01 (referring to “State’s attorney” and “attorney representing the State”); *id.* art. 35.11 (referring to “State’s counsel”); *id.* art. 36.07 (same); *id.* art. 26.04(p) (referring to “attorney representing the state”); *id.* art. 27.18 (same); *id.* art. 28.061 (same); *id.* art. 29.011(b) (same); *id.* art. 35.261 (same); *id.* art. 38.45(c) (same); *id.* art. 38.451(c) (same); *id.* art. 39.025 (same); *id.* art. 39.026 (same); *id.* art. 35.29 (referring to “prosecuting attorney”); *id.* art. 26.13 (referring to “prosecuting attorney” and “prosecutor” and “attorney representing the state”); *id.* art. 29.035 (referring to “attorney for the state”).

Article 39.14.” Tex. Code Crim. Proc. art. 2A.209. It also requires law enforcement to subsequently inform the attorney if it discovers additional material “required to be disclosed . . . under Article 39.14.” *Id.*

Article 2A.209 makes no sense if the Article 39.14(a)’s reference to the “state” means simply the prosecutor. If Article 39.14(a) requires the prosecutor to turn over only material that is in her own possession, there would be no need for Article 2A.209 to prescribe a role for *law enforcement* to supply the prosecutor with material “required to be disclosed . . . under Article 39.14.” After all, the article would cover only what the prosecutor *already* has. This Court should not interpret Article 39.14(a) in a way that nullifies another, related statute. *Cf. Davis v. State*, 968 S.W.2d 368, 372 (Tex. Crim. App. 1998) (citation omitted) (“Statutes *in pari materia* are to be taken, read and construed together, and effort should be made to harmonize, if possible so that they can stand together and have concurrent efficacy.”).⁴

B. Either of Appellee’s proposed re-writings of “state” pose constitutional problems for the Michael Morton Act.

Both of Appellee’s proposed interpretations of Article 39.14(a), if adopted by this Court, would be constitutionally problematic because of their implications for Article 39.14(h). Subsection (h) requires that, “[n]otwithstanding any other

⁴ “[S]tatutes that deal with the same general subject, have the same general purpose, or relate to the same person or thing or class of persons or things, are considered as being *in pari materia*.” *State v. Vasilas*, 253 S.W.3d 268, 271 (Tex. Crim. App. 2008).

provision” in Article 39.14, “the state” must disclose any exculpatory, impeachment, or mitigating material “that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.” Tex. Code Crim. Pro. art. 39.14(h). As reflected in the “notwithstanding” language at the beginning of subsection (h), this subsection is designed to ensure that the “state” discloses, at a minimum, all exculpatory evidence that must be disclosed as a matter of due process under *Brady v. Maryland*, 373 U.S. 83 (1963). In fact, as this Court has explained, subsection (h) goes further than codifying *Brady*, creating a statutory “duty to disclose [that] is much broader than the prosecutor’s duty to disclose as a matter of due process under *Brady*.” *Watkins v. State*, 619 S.W.3d 265, 277 (Tex. Crim. App. 2021).

Moreover, statutory interpretation principles make clear that the term “state” as used in Article 39.14(h) must satisfy *Brady* obligations. Courts “assume [the] Legislature . . . is aware of and intends to legislate within the confines of our Constitution.” *Ex parte Charette*, 721 S.W.3d 411, 419 (Tex. Crim. App. 2025).⁵ For that reason (among others), this Court is “duty-bound *not to*[] embrace a reading of the statute” that poses constitutional infirmities “where a plain, constitutional

⁵ That assumption is especially apt in this context: *Brady* obligations are a familiar constitutional principle, and the Legislature explicitly invoked *Brady* in enacting the Michael Morton Act. See *Watkins*, 619 S.W.3d at 289 (citing legislative history to explain that “[t]he goal behind the passage of the Michael Morton Act was first to preserve a criminal defendant’s rights under *Brady v. Maryland*”).

reading of the text is available.” *Id.* And any interpretation of Article 39.14(h) that falls short of *Brady* cannot be salvaged by the fact that *Brady* obligations exist independent of the statute. *Contra* Appellee’s Br. at 7 (insisting that “concerns that evidence in the hands of police and crime labs would not be sought or turned over to the defense should be answered by the prosecutor’s *Brady* obligations”). Statutes should not be construed to render whole provisions functionally meaningless. *See TIC Energy & Chem., Inc. v. Martin*, 498 S.W.3d 68, 74 (Tex. 2016). But that would be the effect of interpreting “state” in Article 39.14 to fall below the minimum *Brady* requirements of “state.” Prosecutors would still have to turn over material outside of their own possession as a matter of constitutional due process, and Article 39.14(h) would be vestigial.

Crucially for this case, not only must the definition of “state” in Article 39.14(h) be sufficient to satisfy *Brady*, it must also mean the same thing as the term “state” in Article 39.14(a). Both provisions were enacted in their current form as part of the same statute. And both provisions, in relevant part, use the same language, requiring disclosure of certain materials “in the possession, custody, or control of the state.” Tex. Code Crim. Pro. art. 39.14(a); *id.* art. 39.14(h). When interpreting the same language that is used multiple times in a statute, “courts should begin with the presumption of consistent usage and, all else equal, courts should end there too.” *S.C.*, 650 S.W.3d at 445. There is no principled reason to conclude that “the

possession, custody, or control of the state” means something different in subsection (a) than it does a few paragraphs later in subsection (h).

Thus, in both subsections (a) and (h), the “term” state must be broad enough to ensure that subsection (h) compels the disclosure of, at a minimum, all *Brady* material. So, to assess what the “state” means in these subsections, it is necessary to understand what *Brady* requires.

Brady and its progeny impose two related, but distinct, obligations. First, a prosecutor must turn over more than only what she has in her possession. Instead, for *Brady* purposes, “‘the State’ includes, in addition to the prosecutor, other lawyers and employees in his office and members of law enforcement connected to the investigation and prosecution of the case.” *Ex parte Miles*, 359 S.W.3d 647, 665 (Tex. Crim. App. 2012) (citation omitted), *superseded by statute on other grounds*, see *Watkins*, 619 S.W.3d 265; see also *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Second, to ensure compliance with that disclosure requirement, an “individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Kyles*, 514 U.S. at 437.

Therein lies the problem for Appellee. Adopting either of its proposals as the meaning of “state” in Article 39.14(a), and thus the meaning of “state” in Article 39.14(h), would cause Article 39.14(h) to fall short of ensuring compliance with *Brady*. Appellee’s preferred proposal—in which “state” means only the

prosecutor—self-evidently flunks *Brady*-related requirements because it would leave the prosecutor free to withhold exculpatory material in the hands of law enforcement. Under this formulation, police could have evidence that fully exonerates a defendant, a prosecutor could know about that evidence, but “the state” would have no obligation to disclose it under Article 39.14(h). It is unclear why the Legislature would enact a provision that so thoroughly fails to require compliance with the bare constitutional minimum.

Appellee’s backup re-interpretation fares slightly better but still falls short of *Brady*. As an alternative to interpreting “state” to mean only the prosecutor’s office, Appellee asks the Court to limit the “state” to the prosecutor’s office and “[l]aw enforcement officers who are investigating, collecting evidence, performing searches, and participating in a suspect’s arrest.” Appellee’s Br. at 56. This limited subset of law enforcement agencies *automatically* excludes the law enforcement agency that is jailing a criminal suspect, even if that jailer assists the prosecution team, and even if that jailer knowingly acquires exculpatory evidence. *Id.* at 60–61. But due process does not allow the state to withhold evidence from prosecution team members just because they work for agencies that only sometimes assist with prosecutions, or because their participation typically occurs after the defendant’s arrest. Instead, the *Brady* rule extends to anyone “acting on the government’s behalf in the case,” *Kyles*, 514 U.S. at 437, or “connected to the . . . prosecution of the case,”

Ex parte Miles, 359 S.W.3d at 665, without regard to when or how they joined the team.

The facts of this case illustrate the problematic nature of Appellee’s alternative test. Here, Corsicana Police responded to the scene, arrested Mr. Moten, and transported him to the Navarro County jail in Corsicana. That jail just happens to be run by the Navarro County Sheriff. The case was then prosecuted by the Navarro County District Attorney’s Office (“DA”), located in Corsicana, in Navarro County District Court, based in Corsicana. As Appellee would have it, however, Article 39.14(a) *would* require the Navarro County DA to ask for and disclose the Navarro County jail calls if the Navarro County Sheriff had responded to the incident, arrested Mr. Moten, and placed him in the Navarro County jail, which is run by the Navarro County Sheriff—but it *would not* require the Navarro County DA to disclose the Navarro County jail calls because, instead, a local police department placed Mr. Moten in the Navarro County jail. *See* Appellee’s Br. at 54–62 (attempting to distinguish between law enforcement agencies that receive and respond to 911 calls and take suspect into custody from those that keep suspect in custody).

Consider the following scenario: a local police department investigates and arrests a suspect, taking them to a jail run by the County Sheriff, where the suspect is held while the County DA prosecutes the case. The County Sheriff routinely

records jail calls but passes them along to the County DA only if they are *inculpatory*, while withholding recordings of calls that are *exculpatory*. Under the Appellee’s stilted secondary definition of “state,” this improper practice would be perfectly consistent with Article 39.14 because the exculpatory recordings would not be “in the possession, custody, or control of the state.” That falls short of *Brady* obligations. *See* Tex. Att’y Gen. Op. No. KP-0041 (Oct. 2015) (“*Brady* does impose a duty upon the prosecutor to discover whether investigators and employees found evidence favorable to a defendant in the [jail call] recordings The fact that the recordings are held by a third party vendor pursuant to a contract with the County does not absolve a prosecutor of the duty to make him or herself aware of what investigators and law enforcement officials discover.”). But that’s the implication of Appellee’s backup proposal. No interpretation of “state” should countenance that scenario.

C. Either of Appellee’s proposed re-writings of “state” pose constitutional problems for the Michael Morton Act.

To the extent any lingering ambiguity exists, the legislative purpose of the Michael Morton Act confirms that the Legislature did not intend either of Appellee’s proposed re-interpretations of the term “state.” *See Boykin v. State*, 818 S.W.2d 782, 785–86 (Tex. Crim. App. 1991) (holding that, if a statute is ambiguous, courts may consider legislative history); Tex. Gov’t Code Ann. § 311.023 (including legislative history among “Statute Construction Aids”).

This Court has previously explained that “[t]he goal behind the passage of the Michael Morton Act was first to preserve a criminal defendant’s rights under *Brady v. Maryland*.” *Watkins*, 619 S.W.3d at 289 (citing S. Comm. on Criminal Justice, Bill Analysis, Tex. S.B. 1611, 83rd Leg., R.S. (2013)). But interpreting “state” narrowly does not achieve that goal—it undermines it by *limiting* statutory access to *Brady* material to material held by anyone besides the prosecutor or a narrow subset of law enforcement. *See supra* Argument II.B.

Other legislative materials confirm that the intent of the law was to “broaden criminal discovery for defendants, making disclosure the rule and non-disclosure the exception.” *Watkins*, 619 S.W.3d at 277. Its author referred to it as an “[o]pen file discovery” bill, explaining “[e]very defendant should have access to *all* the evidence relevant to his guilt or innocence, with adequate time to examine it.” S. Comm. on Criminal Justice, Bill Analysis, Tex. S.B. 1611, 83rd Leg., R.S. (2013) (emphasis added).⁶ In a similar vein, Governor Perry’s press release announcing his signing of the bill explained that the law “allows for broader discovery, and removes barriers for accessing *any* evidence.” Press Release, Office of the Gov. Rick Perry, *Gov. Perry Signs Senate Bill 1611, The Michael Morton Act* (May 16, 2013) (emphasis added).⁷

⁶ Available at <https://lrl.texas.gov/scanned/srcBillAnalyses/83-0/SB1611RPT.PDF>.

⁷ Available at <https://lrl.texas.gov/scanned/govdocs/Rick%20Perry/2013/press051613.pdf>.

Heath's understanding of "state"—which doesn't allow a prosecutor to withhold evidence that is not directly in her possession or in the possession of only *some* law enforcement agencies—is consistent with the stated purposes of the political branches that enacted and signed the Michael Morton Act; Appellee's attempt to re-write "state" isn't.

III. Any interpretation of "state" should be functional and must include jailers.

The inadequacy of Appellee's proposed alternatives to the holding of *Heath* is more than enough reason to leave that holding intact. But if the Court nevertheless alters its interpretation of "state" in Article 39.14, it should take care to impose a functional, broad definition.

A. Any limiting principle on "state" must not absolve a prosecutor of her duty to inquire.

Any limiting definition of "state" must account for the role that a government agency plays in the case and that agency's relationship with the prosecutor. At bare minimum, Article 39.14(a) should be understood to mean that a prosecutor must inquire about material from any entity that is "acting on the government's behalf in the case." *Kyles*, 514 U.S. at 437. Put simply: if there is an agency from which a prosecutor *can* ask for and receive material, the term "state" should be defined to make clear that she *must* do so. The rule of *Heath* satisfies that important principle. Any revision of *Heath* should therefore, at a minimum, make clear that the "state's"

obligations may turn on the particular facts of a case and the agencies involved. As this case shows, prosecution team members can come from many places and sometimes get involved after the initial investigation. A one-size-fits-all dividing line cannot be drawn ahead of time unless, as in *Heath*, that one-size-fits-all approach defines state to mean the entire State of Texas.

A functional approach also addresses the information asymmetry and trial-by-ambush that disclosure is designed to avoid. There should be little doubt that, as a practical matter, if a prosecutor is aware that an agency has inculpatory evidence, and she can receive that evidence upon request, she will make the request. Appellee acknowledges as much, explaining “[t]here is already inherent institutional motivation for prosecutors to seek out *inculpatory* material and law enforcement to turn it over.” Appellee’s Br. at 43. That provides a useful rule of thumb for determining when Article 39.14(a)’s expansive definition of “state” is implicated: where a prosecutor can seek and receive hypothetical inculpatory information from an agency, Article 39.14(a) triggers her duty to inquire about *other* material, too. She cannot choose to ask the agency only when she thinks it might help her case, but otherwise decline to do so. That type of parity is consistent with the Michael Morton Act’s goal that defendants have access to *all* the evidence relevant to a case. *See supra* Argument II.C.

Applying this type of functional approach leads to a straightforward conclusion in this case. Inculpatory jail calls are often used in prosecutions, including in Navarro County. *See, e.g., Bahena v. State*, 634 S.W.3d 923, 928 (Tex. Crim. App. 2021); *Sanchez v. State*, 595 S.W.3d 331 (Tex. App.—Houston [14th Dist.] 2020, no pet.); *Bell v. State*, No. 10-19-00181-CR, 2020 WL 5939035 (Tex. App.—Waco Aug. 26, 2020, pet. ref’d); *Steinmann v. State*, No. 10-16-00137-CR, 2017 WL 2623065, at *1 (Tex. App.—Waco June 14, 2017, no pet.). One request and one business day is all it took for the Navarro County DA to get the calls at issue in this case from the Navarro County Sheriff. On a Friday afternoon, the DA requested the material; by “first thing” on Monday morning, the Sheriff’s Office had fulfilled that request. Appellee’s Br. at 4. There can be no serious doubt that, if a Navarro County prosecutor knew that the Navarro County Sheriff possessed an inculpatory jail call by a defendant, she would ask for and receive it as a matter of course. Given that relationship, the prosecutor had a duty to seek other information upon Mr. Moten’s request under Article 39.14(a).

B. Other jurisdictions have successfully implemented a functional approach to “open-file” discovery.

Many states have broad open-file discovery practices that take a functional approach and impose upon prosecutors a duty to inquire of other agencies. These jurisdictions demonstrate that taking a broad, functional approach to the term “state” in Article 39.14(a) would be entirely reasonable and administrable.

Missouri, for example, requires prosecutors to make efforts to gather information that “would be discoverable . . . but is in possession or control of other governmental personnel.” Mo. Sup. Ct. R. 25.03(h). That rule, by design, “impose[s] an ‘affirmative duty . . . to take action to discover information which it does not possess.’” *Merriweather v. State*, 294 S.W.3d 52, 56 (Mo. 2009). In North Carolina, meanwhile, the prosecutor must “make available . . . the complete files of all law enforcement agencies, investigatory agencies, and prosecutors’ offices involved in the investigation of the crimes committed or the prosecution of the defendant.” N.C. GSA § 15A-903(a)(1). The statute defines “investigatory agency” broadly, to include “any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor’s office in connection with the investigation of the crimes committed or the prosecution of the defendant.” *Id.* The American Bar Association suggests a broad approach. ABA Standards for Criminal Justice: Discovery, Standard 11-1.1(h) (4th ed. 2020); *see also* Commentary, *ABA Standards for Criminal Justice: Discovery* 7 (4th ed. 2020).

Several states have adopted a standard in which the prosecutor must seek information from agencies involved in a case who regularly report to the prosecutor or have done so in the relevant case. *See, e.g.*, Mass. Crim. Pro. R. 14(a); Maine R. U. Crim. P. 16(a)(1); Alaska R. Crim. P. 16. The ABA has embraced this reporting

criterion as part of its determination of whether material is in “possession or control of the prosecution.”⁸

That makes sense: where an agency is involved in a case and there is regular communication with and reporting from that agency to a prosecutor, there is no reason why the prosecutor shouldn’t inquire whether that agency has relevant information. That principle underscores how misplaced Appellee’s arguments in this case are. There is regular, mandated reporting from the Navarro County Sheriff to the Navarro County DA. Tex. Code of Crim. Procedure art. 2A.204 (requiring sheriff to provide monthly written notice to DA of all prisoners in subchapter entitled “Reporting Duties”). There’s no reason why a prosecutor should be absolved from seeking material from an agency that is statutorily mandated to communicate with her and is jailing a defendant in her prosecution.

To avoid doubt: *Amici* do not invoke the practices of other jurisdictions as a policy matter. These practices are relevant because *Texas* law, in the Michael Morton Act, mandates certain discovery practices and these other jurisdictions’ experiences demonstrate that Article 39.14(a) is workable. Plenty of jurisdictions impose upon

⁸ This criterion appears in previous iterations of the ABA Standards. The most recent edition changes the formulation, but the Commentary to the Standards explains that this is intended to sweep as broadly as a previous standard, which “required disclosure of information in the possession or control of ‘staff and of any others who regularly report to or. . . have reported to the attorney’s office.’” Commentary, *ABA Standards for Criminal Justice: Discovery* 7 (4th ed. 2020) (alteration in original).

prosecutors a duty to seek information from other state agencies based on the function those agencies play in an investigation.

CONCLUSION

There is no good reason to revisit *State v. Heath*, and plenty of good reasons to decline to do so. If the Court nevertheless chooses to re-interpret “state” as used in Article 39.14, it cannot accept either of Appellee’s proposals.

Dated this 25th day of June, 2026

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Pursuant to Rule 9.4(i)(3) of the Texas Rules of Appellate Procedure, I hereby certify that the word count in this Brief, exclusive of matters designated for omission, is 5,728 words as counted by Microsoft Word.

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I hereby certify that on the 25th day of June, 2026, a true copy of the foregoing Brief was served by this Court's e-filing system on the following counsel:

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