No Surprise Expert Witnesses

Requires both sides to disclose a testifying expert's signed opinions before trial — so expert claims are tested beforehand, not sprung from the witness stand.

90TH LEGISLATURE • PROPOSAL
Amends Code of Criminal Procedure art. 39.14(b)
Status: draft — ready for an author

GUIDING PRINCIPLES
Help see perpetrators get the justice they deserve • Justice requires innocence protection

CHAMPION SOUGHT
Author / co-author / endorser / testifier / adviser — whichever role your group can take

THE ASK We ask victims' advocacy organisations to **champion, endorse, testify for, or advise on** this bill — and members of the 90th Legislature to consider authoring it. No organisation is a supporter until it commits.

IN PLAIN ENGLISH — the three ideas behind this bill, without the legal shorthand

What is the Morton Act?
Texas's 2013 law, named for Michael Morton, who spent nearly 25 years in prison for a murder he did not commit after evidence was withheld. It requires prosecutors to share their evidence — the strongest duty of its kind in the country. **This bill does not change it.**

Why not just copy the federal rules?
Federal court does one thing better: experts must file a detailed, signed report. The rest of the federal system is *weaker* than Texas law, so copying it whole could drag Texas down. This bill borrows **only the expert report**.

Can't judges already punish a surprise?
Only by improvising — pausing the trial or limiting testimony. The law names no penalty, so rulings vary and are easily appealed. This bill **writes the steps down in order**, and adds one new tool: telling the jury it may consider the late disclosure.

1 — THE PROBLEM VICTIMS FACE TODAY

Texas law requires each side to name its expert witnesses before trial — but only the expert's **name and address**. Not the opinions, not the bases, not the qualifications. An expert's real views can be heard for the first time from the witness stand, when a serious challenge is nearly impossible. In Cayley Mandadi's first trial, the defence presented expert theories the prosecution could not test in real time — and her father texted rebuttal questions to the prosecutor from the gallery, mid-trial.

2 — WHAT THIS BILL DOES

- **Requires a signed statement for each testifying expert:** all opinions the party will elicit, the bases for them, and the expert's qualifications — publications from the previous 10 years, cases testified in during the previous four — updated promptly if it changes.
- **Applies the identical standard to the State's experts,** in both the guilt and punishment phases — in plain terms: *show your expert work before trial, both sides, same rule.* The report standard follows the federal rule (Federal Rule of Criminal Procedure 16), adapted to Texas.
- **Adds a graduated sanctions ladder:** an order to comply, then a continuance (a pause so the other side can prepare), then a neutral jury instruction letting the jury weigh a material failure — exclusion only as the last resort.

3 — HOW IT HELPS VICTIMS

BEFORE	AFTER
A family watches an undisclosed expert give undisclosed opinions, and the challenge is improvised at counsel table — or texted from the gallery.	Both sides hold the signed opinions weeks before trial; weak testimony is tested — or withdrawn — at a pretrial hearing.

> *"I texted rebuttal questions to the prosecutor from the gallery, mid-trial."*
>
> — Lawrence Baitland, father of Cayley Mandadi, murdered October 29, 2017

4 — BALANCE & SAFEGUARDS

The duty runs both ways, and that symmetry is constitutional, not cosmetic: under *Wardius v. Oregon* the State must owe the identical disclosure, and a defendant's duty arises only if the State has complied. Only **testifying** experts are covered — consulting experts, defence work product, and the defendant's own statements are excluded. A plain safeguard clause states that nothing in the bill narrows any Morton Act duty. Excluding a defence expert requires on-the-record findings — willfulness, materiality, prejudice, no lesser cure.

5 — HOW HARD WILL THIS BE TO PASS?

●●●●○ **High**

Reciprocal discovery was the defence bar's red line in 2013. House and governorship have flipped; the Senate stays Republican (19–12). Likely stall point: the criminal-justice committees. The narrowed, expert-only scope is itself the fallback.

6 — RISKS & MITIGATIONS

RISK / OBJECTION	MITIGATION IN THE BILL OR MESSAGE
Compelled disclosure chills defence investigation	Only what the defence will itself present at trial is disclosed (*Williams v. Florida*); consulting experts untouched.
Exclusion punishes clients for their lawyers' errors	Continuance and compliance orders come first; exclusion needs willfulness findings on the record (*Taylor*).
It weakens the Michael Morton Act	Express safeguard clause; the verbatim federal transplant was considered and rejected.

7 — WHO IS LIKELY WITH US — AND AGAINST US

POTENTIAL ALLIES

Texas District & County Attorneys Association — prosecutors gain the defence experts' actual opinions. To approach.

Texas Crime Victims United — survivor-run; a victims'-experience bill. To approach.

Elected prosecutors in expert-heavy cases — natural witnesses. Ask: testify.

LIKELY OPPONENTS

Texas Criminal Defense Lawyers Association — opposed reciprocal discovery in 2013; expect it to lead opposition.

Innocence and reform organisations — potential opponents of a broad bill; potential neutrals on this narrowed one.

Best counter: defence counsel gain the same right against the State's experts.

8 — POTENTIAL AUTHORS FROM BILL SCORING

CANDIDATE	SCORE*	WHY THEY FIT
Sen. Joan Huffman — Senate, SD 17	**71**	Strongest fit: former prosecutor and district judge, on Senate Criminal Justice. Sound out informally first.
Sen. Pete Flores — Senate, SD 24	**60.75**	Senate Criminal Justice chair in the 89th; a chair-carried bill avoids a referral fight.
Rep. John Smithee — House, HD 86	**54.5**	House Criminal Jurisprudence chair in the 89th; the House gatekeeper.

* Score = the advocates' prior bill-scoring rating (89th Legislature backtest). Committee roles are 89th-Legislature: re-verify in January.

COST
No significant fiscal note expected. The real cost is workload: prosecutors must disclose their own experts.

EVIDENCE IT CAN WORK
Federal courts use this standard; Florida, Arizona, and Colorado run equal or broader systems.

NEXT STEP
A 20-minute briefing, then a yes or no on championing. Contact: Lawrence Baitland.