By: _____ H.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to notice to victims and surviving family members before the destruction of evidence in certain criminal cases, to a register of notice recipients, to pre-destruction access and court-ordered copying or transfer of evidence, and to the preservation of the rights of an accused person.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 56A, Code of Criminal Procedure, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. NOTICE BEFORE DESTRUCTION OF EVIDENCE

Art. 56A.701. DEFINITIONS. In this subchapter:

(1) "Covered offense" means:

(A) a criminal homicide offense under Chapter 19, Penal Code;

(B) an offense under Section 22.011 or 22.021, Penal Code (sexual assault; aggravated sexual assault);

(C) an offense under Section 20.03 or 20.04, Penal Code (kidnapping; aggravated kidnapping); or

(D) any other offense as a result of which the victim of the offense dies.

(2) "Evidence" means an item of physical evidence, and any record documenting or depicting an item of physical evidence, that was collected in the investigation or prosecution of a covered offense

and that is in the possession, custody, or control of a custodian, including biological evidence as defined by Article 38.43(a) and an eligible exhibit as defined by Article 2A.155(a). "Evidence" does not include an item described by Article 56A.709(c).

(3) "Custodian" means a governmental or public entity or an individual charged with the collection, storage, preservation, analysis, or retrieval of evidence, including a law enforcement agency, a crime laboratory, the attorney representing the state, a court clerk, and a court reporter.

(4) "Destruction" means the destruction of evidence and includes any other disposition of evidence that makes the evidence permanently unavailable, including disposal of an exhibit under Article 2A.155 and delivery of an exhibit for disposal as surplus or salvage property. "Destruction" does not include:

(A) return of property to its owner under Chapter 47 or Article 56A.051(a)(9);

(B) disposition of property finally forfeited under Chapter 59; or

(C) destruction of contraband or other property under a court order entered under Chapter 18

or other law, except that Subsection (C) does not exempt a custodian from the notice duty under Article 56A.703 for biological evidence described by Article 38.43.

(5) "Close relative" means a close relative of a deceased victim as defined by Article 56A.001 and includes a stepparent of the victim who married the victim's parent while the victim was a minor.

(6) "Rights holder" means:

(A) the victim of a covered offense, if the victim is living; or

(B) if the victim is deceased, a close relative of the victim.

(7) "Registered recipient" means the single rights holder who is registered under Article 56A.702 to receive notice under this subchapter for a victim.

(8) "Victim assistance coordinator" means the victim assistance coordinator of the office of the attorney representing the state for the county in which the covered offense was prosecuted or, if no prosecution was instituted, the county in which the offense was investigated.

Art. 56A.702. NOTICE REGISTER; OFFER OF REGISTRATION.

(a) The victim assistance coordinator shall maintain a register of notice recipients for covered offenses

within the coordinator's jurisdiction. The register must record, for each victim: the name of the registered recipient; the recipient's relationship to the victim; and the recipient's current mailing address and, if the recipient consents, electronic mail address and telephone number for text notification.

(b) Only one person may be registered as the notice recipient for a victim at a time. A registered recipient may be replaced at any time on the written request of the rights holder who made the registration or, in a case in which the victim is deceased, on the written request of a close relative entitled to register under this article. A dispute over registration shall be resolved by the court of conviction or, if there was no conviction, by a district court in the county in which the offense was investigated, on motion of an interested person.

(c) A rights holder may register, or update a registration, at any time. A registrant shall keep the registrant's contact information current. The state may not be held liable for a failure of notice resulting from a registrant's failure to provide or maintain a current address.

(d) Offer duty. For a covered offense that reaches disposition or finality on or after the effective date

of this subchapter, the victim assistance coordinator shall offer registration under this article to the rights holder:

(1) at the disposition of the criminal case arising from the offense, including a conviction, acquittal, dismissal, or decision not to prosecute of which the coordinator is aware; and

(2) again at the finality of any conviction arising from the offense.

(e) The standard written notice of victims' rights provided under this chapter must describe the register and the rights provided by this subchapter.

(f) The register is confidential, is not subject to disclosure under Chapter 552, Government Code, and may be disclosed only to a custodian for the purpose of providing notice under this subchapter.

Art. 56A.703. NOTICE BEFORE DESTRUCTION.

(a) A custodian may not destroy evidence in a case involving a covered offense unless the custodian has:

(1) checked the register maintained under Article 56A.702 and, for evidence collected in relation to a sexual assault, the statewide electronic tracking system under Section 420.034, Government Code; and

(2) if a notice recipient is registered for the victim, given the notice required by Subsection (b).

(b) Notice under this article must be given directly and in writing to the registered recipient, by mail to the recipient's registered address and, if the recipient has consented, by electronic mail or text message in the manner provided by Article 56A.0525, not later than the 91st day before the date of the planned destruction. Entry of a notice into an electronic tracking system, without direct notice to the registered recipient, does not satisfy this article.

(c) The notice must state:

(1) a description of the evidence proposed for destruction sufficient to identify it;

(2) the name and contact information of the custodian holding the evidence;

(3) the planned date of destruction, which may not be earlier than the 91st day after the date the notice is given;

(4) the recipient's right to object under Article 56A.704, and the effect of an objection;

(5) the recipient's right to access the evidence before destruction under Article 56A.705 and to move for copying or transfer of selected items under Article 56A.706; and

(6) the name and contact information of the victim assistance coordinator.

(d) This article is in addition to, and does not replace, any notice required by Article 38.43(d) or Article 2A.155(d). If a destruction requires notice under both this article and another law, the custodian shall give each required notice; the evidence may not be destroyed until the requirements of each applicable law are satisfied.

(e) This article does not shorten any period during which evidence must be retained under Article 38.43(c) or (c-1) or other law.

Art. 56A.704. OBJECTION; HOLD; EXTENDED RETENTION.

(a) A registered recipient may object to a noticed destruction by delivering a written objection to the custodian and to the victim assistance coordinator before the planned destruction date stated in the notice.

(b) A timely objection automatically holds the destruction. The custodian may not destroy the evidence while a hold under this article is in effect, except as provided by Article 56A.707 (perishable or hazardous evidence) or under an order entered under Article 56A.706.

(c) If an objection includes a written request for extended retention, the custodian shall retain the evidence for 10 years from the date of the objection. The registered recipient may renew the extension once, by written

request delivered before the extension expires, for one additional period of 10 years.

(d) An extension under this article does not shorten a longer retention period required by Article 38.43(c) or (c-1) or other law; if the retention period otherwise required by law is longer, that period controls.

(e) Evidence that is the subject of a pending motion for forensic DNA testing under Chapter 64, or of a pending application for a writ of habeas corpus of which the custodian has written notice, may not be destroyed under this subchapter while that proceeding is pending, regardless of whether an objection has been filed.

Art. 56A.705. PRE-DESTRUCTION ACCESS.

(a) After notice is given under Article 56A.703 and before the evidence is destroyed, the registered recipient may request access to the evidence described in the notice. A request may also be made by a rights holder who is not the registered recipient with the registered recipient's written consent.

(b) The custodian, in coordination with the victim assistance coordinator, shall permit the requesting rights holder, together with the rights holder's attorney, to view the evidence at a reasonable time and place under the custodian's supervision.

(c) Copies. The rights holder is entitled to a copy of each

written report in the evidence that is a public record. Photographic, video, audio, and other imagery evidence may be viewed under Subsection (b) but may not be copied under this article; copying of imagery or of a physical item may be sought only by motion under Article 56A.706.

(d) Access under this article confers inspection and copying rights only. It does not authorize the removal, release, or private testing of an original item of physical or biological evidence, except under an order entered under Article 56A.706.

(e) Access under this article does not stay, delay, or otherwise affect an expunction proceeding under Chapter 55A, and does not extend to any material described by Article 56A.709(c).

Art. 56A.706. COURT-ORDERED COPYING OR TRANSFER OF SELECTED ITEMS; NO-HARM STANDARD.

(a) Before a noticed destruction occurs, a rights holder may file a motion requesting an order authorizing the copying, or the transfer of possession, of selected, itemized items of the evidence described in the notice.

(b) The motion must be filed in a district court in the county in which the covered offense was prosecuted or, if no prosecution was instituted, in the county in which the evidence is held. The movant shall serve the motion on the custodian, the attorney representing the state,

and the person accused or convicted of the covered offense or that person's last attorney of record. Each person served is entitled to notice of and an opportunity to be heard on the motion.

(c) The court may grant the motion, in whole or in part, only if the court finds, and states in its order, that the copying or transfer will cause no harm. In applying the no-harm standard, the court shall expressly consider:

(1) whether the item, or a representative sample of the item sufficient to permit forensic DNA testing, must be preserved for pending or possible testing under Chapter 64 or for any other pending or reasonably foreseeable proceeding;

(2) whether any criminal, habeas corpus, or other proceeding arising from the covered offense is pending, and the effect of copying or transfer on that proceeding;

(3) the chain of custody of the item and whether copying or transfer would impair the item's availability or integrity for any future proceeding;

(4) the rights of the accused or convicted person, including Article 56A.709; and

(5) the privacy and statutory rights of any other

victim or third person in the item.

(d) An order granting transfer of possession of an item of biological evidence may not issue unless a representative sample of the item sufficient to permit future DNA testing is retained by a custodian.

(e) Regardless of a finding under Subsection (c), the court may not order the copying or transfer of an item described by Article 56A.709(c).

(f) An order under this article must identify each item authorized for copying or transfer. An order authorizing transfer of possession transfers possession only; it does not adjudicate title to the item, and does not affect a return of property under Chapter 47.

Art. 56A.707. PERISHABLE OR HAZARDOUS EVIDENCE.

(a) This article applies to evidence that, because of its perishable condition, hazardous character, or a legal requirement that it be destroyed, cannot reasonably be retained for the periods provided by this subchapter, including chemicals, biohazardous material, and contraband subject to summary destruction under other law.

(b) A custodian shall give the notice required by Article 56A.703 for evidence described by this article. If the evidence is a true perishable or hazard and its condition requires destruction earlier than the period

provided by Article 56A.703, the custodian shall give the notice as soon as practicable before destruction. A timely objection does not hold the destruction of evidence described by this article.

(c) The custodian shall document the condition or character of the evidence that required action under this article and shall record that documentation in the case file and provide a copy to the victim assistance coordinator.

Art. 56A.708. ENFORCEMENT.

(a) A rights holder entitled to notice under this subchapter may apply to a district court for a writ of mandamus or injunctive relief to compel compliance with this subchapter or to restrain a threatened destruction in violation of this subchapter.

(b) This subchapter does not create a criminal offense and does not authorize an award of damages.

Art. 56A.709. RIGHTS OF THE ACCUSED PRESERVED; LIMITATIONS.

(a) The rights of the accused preempt the rights provided by this subchapter. If a provision of this subchapter conflicts with a right of an accused or convicted person under the constitution or laws of this state or the United States, the right of the accused or convicted person controls.

(b) Nothing in this subchapter stays, delays, or otherwise affects an expunction under Chapter 55A, and no right

under this subchapter extends to records or evidence that are the subject of an expunction order or that are required to be destroyed or returned under Chapter 55A.

(c) The following are excluded from this subchapter and may not be accessed, copied, or transferred under it:

(1) evidence that is the personal property of a person who was accused of the covered offense and who was acquitted of, or never sentenced for, that offense -- including the contents of that person's electronic devices and accounts -- except evidence that was the property of the victim;

(2) contraband per se and any other item the possession of which is unlawful, including child sexual abuse material;

(3) material that is sealed by court order, expunged, or subject to an order of nondisclosure, while that status continues; and

(4) material whose disclosure is prohibited by other law, including grand jury material and the identity of a confidential informant.

(d) This subchapter does not:

(1) create party status for a victim or a victim's family in any criminal proceeding;

(2) limit Article 39.14, the state's disclosure duties under Brady v. Maryland, Chapter 64, or Articles

11.07, 11.071, or 11.072;

(3) affect any person's rights under Chapter 552, Government Code; or

(4) provide a ground for suppression of evidence, dismissal of a prosecution, reversal of a conviction, or habeas relief based on a violation of this subchapter.

SECTION 2. Article 38.43(d), Code of Criminal Procedure, is amended to require that the notice of a decision to destroy biological evidence also be given, in the manner provided by Article 56A.703, to the registered recipient for the victim of the offense, if any, under Subchapter O, Chapter 56A, and that a written objection by the registered recipient has the effect provided by Article 56A.704.

SECTION 3. Article 2A.155, Code of Criminal Procedure, is amended to provide that:

(1) the clerk's notice of disposal of an eligible exhibit must also be given to the registered recipient for the victim of the offense, if any, under Subchapter O, Chapter 56A, Code of Criminal Procedure, in every county, regardless of population;

(2) the notice to the registered recipient must be given not later than the 91st day before the planned disposal; and

(3) a timely written objection by the registered recipient holds the disposal on the terms provided by Article

56A.704, Chapter 56A.

SECTION 4. Article 56A.051(a), Code of Criminal Procedure, is amended to add the rights of a victim, guardian of a victim, or close relative of a deceased victim to: register under Subchapter O to receive notice before the destruction of evidence in the case; object to a noticed destruction; access evidence before its destruction; and move for court-ordered copying or transfer of selected items, as provided by that subchapter.

SECTION 5. SEVERABILITY. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 6. APPLICABILITY; PHASE-IN FOR CASES FINAL BEFORE THE EFFECTIVE DATE.

(a) This Act applies to a destruction of evidence occurring on or after the effective date of this Act, regardless of when the criminal case arising from the covered offense became final -- including a case that was final before the effective date of this Act.

(b) Phase-in. For a case that was final before the effective date of this Act, Subchapter O, Chapter 56A, Code of Criminal Procedure, as added by this Act,

applies beginning on the first anniversary of the effective date of this Act. During the 12-month period following the effective date, custodians and victim assistance coordinators shall establish the register under Article 56A.702 and accept registrations for those cases.

(c) For a case described by Subsection (b), registration is at the initiative of the victim or the victim's family. A victim assistance coordinator has no duty to notify, locate, or solicit registrations from victims or families in cases final before the effective date of this Act. The offer duty under Article 56A.702(d) applies only to dispositions and finality events occurring on or after the effective date of this Act.

SECTION 7. This Act takes effect September 1, 2027.

DRAFT - Prepared for discussion and Legislative Council drafting; not filed. Bill number and author to be assigned on filing. Article numbering in Subchapter O, Chapter 56A, Code of Criminal Procedure, is a placeholder for the Legislative Council.