By: _____ H.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of certain evidence of a crime that resulted in the death of a person to the victim's surviving family members under the public information law; creating a criminal offense; providing a civil remedy.

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

SECTION 1. Section 552.108, Government Code, is amended by amending Subsections (d) and (e) and adding Subsections (f) through (k) to read as follows:

(d) Notwithstanding other law, a prosecutor may permit a surviving family member of a victim of a crime that resulted in the death of the victim and that occurred in the prosecutor's jurisdiction to view the following evidence of the crime:

(1) a medical examiner's report, if the victim is the person who is the subject of the report;

(2) a photograph or x-ray of the victim's body taken during an autopsy;

(3) video evidence of the crime;

(4) an audio recording of the crime;

(5) a recording of an emergency telephone call made in connection with the crime, including a 911 call;

(6) a forensic or laboratory report relating to evidence collected during the investigation of the crime; and

(7) an offense report relating to the crime.

(e) A surviving family member permitted to view evidence under Subsection (d) may be accompanied by:

(1) the other surviving family members of the victim; and

(2) an attorney representing a surviving family member, who may attend and view the evidence with the family member.

(f) A prosecutor may require a person permitted to view evidence under Subsection (d) to sign a confidentiality agreement before viewing the evidence. Except as provided by Subsection (g), a person permitted to view evidence under Subsection (d) may not duplicate, record, capture, or otherwise memorialize the evidence viewed.

(g) A prosecutor may provide to a surviving family member a copy of a written report described by Subsection (d) if the report is public information under this chapter that is not excepted from required disclosure and not confidential under other law. A copy provided under this subsection remains subject to the confidentiality agreement under Subsection (f), if any. Evidence other than a report copied under this subsection may be viewed only and may not be copied.

(h) A prosecutor may decline to permit the viewing of an item of evidence under Subsection (d), or may delay the viewing or redact a portion of an item, if the prosecutor determines that permitting the viewing could reasonably jeopardize the investigation or prosecution of the crime or the safety of any person. The fact that a surviving family member is a fact witness who is expected to testify in a

proceeding relating to the crime is a ground on which a prosecutor may decline or delay viewing under this subsection. If a prosecutor declines or delays a viewing requested under Subsection (d), the prosecutor shall provide to the requesting surviving family member a written statement of the reason for the declination or delay and an estimated date on which the viewing may occur.

(i) A permitted viewing under Subsection (d), and the provision of a copy under Subsection (g), is not a voluntary disclosure of information for purposes of Section 552.007(b). A governmental body, by providing information under Subsection (d) or (g) that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. Subsections (d) through (h) do not affect:

(1) the right of a person to obtain evidence of a crime from a governmental body under other law;

(2) the procedures under which the information is obtained under other law;

(3) the use that may be made of information obtained under other law;

(4) the duty of the state to disclose information to a defendant under Article 39.14, Code of Criminal Procedure, the United States Constitution, or the Texas Constitution; or

(5) the right of a defendant in a criminal proceeding to a fair trial.

(j) Subsections (d) through (h) do not authorize the viewing of:

(1) a witness statement;

(2) a statement or interview of a suspect;

(3) information the disclosure of which is prohibited by federal law or by court order; or

(4) information that is confidential under Section 552.1315.

(k) In this section and Section 552.1085:

(1) "Prosecutor" means the attorney representing the state in a criminal proceeding, including a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.

(2) "Surviving family member" means, with respect to a victim of a crime that resulted in the victim's death:

(A) a close relative of the deceased victim, as defined by Article 56A.001, Code of Criminal Procedure;

(B) a stepparent of the victim who married the victim's parent while the victim was a minor.

(3) Whether a person is a surviving family member under Subdivision (2) shall be determined by the victim assistance coordinator of the prosecutor's office from the case file.

SECTION 2. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.1081 to read as follows:

Sec. 552.1081. OFFENSE; CIVIL REMEDY. (a) In this section, "graphic material" means a photograph, x-ray, video recording, or audio recording viewed under Section 552.108(d) that depicts or records the body of a victim or the commission of a crime.

(b) A person commits an offense if the person intentionally or knowingly records, duplicates, captures, or distributes graphic

material that the person obtained through a viewing permitted under Section 552.108(d) or 552.1085. An offense under this subsection is a Class A misdemeanor.

(c) A person aggrieved by a violation of Subsection (b), including a surviving family member of the victim depicted or the prosecutor for the jurisdiction in which the crime occurred, may bring an action for injunctive relief and actual damages arising from the violation.

(d) Except as provided by Subsections (b) and (c), a person's breach of a confidentiality agreement signed under Section 552.108 or 552.1085 does not subject the person to a civil penalty or criminal liability under this section.

SECTION 3. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.1085 to read as follows:

Sec. 552.1085. POST-FINALITY ACCESS TO EVIDENCE. (a) In this section:

(1) "Final," with respect to a conviction, means that:

(A) the court of appeals has issued its mandate in the case, or, if no appeal was taken, the time for filing a notice of appeal has expired; and

(B) the period for filing a petition for writ of certiorari in the Supreme Court of the United States, including any extension, has expired without a petition being filed, or, if a petition was filed, the petition has been denied or the judgment has been affirmed and the Supreme Court's mandate has issued.

(2) If a conviction is remanded for resentencing only, the conviction is not final for purposes of this section until the punishment imposed on remand is itself final under Subdivision

(1).

(3) "Non-prosecution agreement" means a written agreement signed by the prosecutor and the accused under which the prosecutor agrees not to prosecute the accused for the crime.

(4) "Surviving family member" has the meaning assigned by Section 552.108(k).

(5) "Eligible requester" means:

(A) a surviving family member of the victim, if the crime resulted in the victim's death; or

(B) the victim, if living, of an offense under Section 22.011 or 22.021, Penal Code (sexual assault or aggravated sexual assault), or Section 20.03 or 20.04, Penal Code (kidnapping or aggravated kidnapping).

(b) After a conviction for a crime is final, or after a non-prosecution agreement relating to the crime is signed, a prosecutor may permit an eligible requester to view evidence of the crime in the possession, custody, or control of the prosecutor, subject to this section. An eligible requester may be permitted access under this subsection only in the case in which the requester holds that status. A surviving family member is not an eligible requester in a case in which the victim is living. Access under this section is discretionary; this section does not create an entitlement to view any particular item of evidence.

(c) Before permitting access under this section, the prosecutor may screen the evidence and withhold any item. Evidence files may contain material that an eligible requester has no right to see, and the prosecutor's authority to withhold under this subsection is not

limited to the grounds stated in Section 552.108(h).

(d) Notwithstanding Subsection (b), a prosecutor may not permit access under this section to evidence that is the accused's own evidence, including data from the accused's cellular telephone or other personal device, if the accused was acquitted of the crime or was never sentenced for the crime, including under a non-prosecution agreement. This subsection does not prohibit access to evidence that was the property of the victim. This section does not authorize access to records or other material that is subject to expunction under Chapter 55A, Code of Criminal Procedure, and access under this section does not stay an expunction proceeding.

(e) A prosecutor may provide a copy of a written report viewed under this section only if the report is public information under this chapter that is not excepted from required disclosure and not confidential under other law. Other evidence viewed under this section may not be copied, duplicated, recorded, captured, or otherwise memorialized by the person viewing it. The prosecutor may require a confidentiality agreement as a condition of access under this section, and Section 552.1081 applies to graphic material obtained under this section.

(f) If a prosecutor denies a request for access under this section, the prosecutor shall provide the requesting eligible requester a written response stating that the request is denied. A written response under this subsection is the prosecutor's only duty with respect to a denied request under this section.

(g) Access permitted under this section is not a voluntary disclosure of information for purposes of Section 552.007(b), and a

governmental body that provides information under this section does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future.

SECTION 4. (a) 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.

(b) Sections 1 and 2 of this Act are severable from Section 3 of this Act. The invalidity, amendment, or failure of either does not affect the validity or operation of the other.

(c) A violation of Section 552.108 or 552.1085, Government Code, as amended or added by this Act, or a person's breach of a confidentiality agreement under those sections, is not by itself grounds for suppression of evidence, dismissal of a prosecution, or a new trial in a criminal proceeding.

SECTION 5. (a) Sections 1 and 2 of this Act apply to a crime that occurred before, on, or after the effective date of this Act.

(b) Section 3 of this Act applies regardless of whether the crime occurred or the conviction became final before, on, or after the effective date of this Act, except that for a conviction that was final before the effective date of this Act, a request for access under Section 552.1085, Government Code, as added by this Act, may not be made before the first anniversary of the effective date of this Act.

SECTION 6. This Act takes effect immediately if it receives a vote of

two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2027.