DRAFT — PREPARED FOR DISCUSSION; NOT FILED

By: _____ H.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to expert witness disclosure in criminal cases.

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

SECTION 1. Article 39.14, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (o) to read as follows:

(b) On a party's request made not later than the 60th day before the date that jury selection in the trial is scheduled to begin or, in a trial without a jury, the date that the presentation of evidence is scheduled to begin, the party receiving the request shall disclose to the requesting party, in writing in hard copy form or by electronic means, for each person the disclosing party may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence:

(1) the name and address of the person; and

(2) the disclosure required by Subsection (b-1) for that

person.

Except as otherwise provided by this subsection, the disclosure must be made not later than the 30th day before the date that jury selection is scheduled to begin or, in a trial without a jury, the date that the presentation of evidence is scheduled to begin. The deadline under this subsection applies to an expert witness whose testimony will be offered during the guilt or innocence phase of the trial. For an expert witness whose testimony will be offered only during the punishment phase of the trial, the disclosure must be made not later than the 30th day before the date that jury selection is scheduled to begin, unless the court for good cause orders a later date that provides a fair opportunity for the requesting party to meet the expert evidence and that is not later than the date that the punishment phase of the trial begins. On motion of a party and on notice to the other parties, the court may order an earlier time at which one or more of the other parties must make the disclosure to the requesting party. A party shall promptly supplement or correct a disclosure under this subsection or Subsection (b-1) if the party learns that the disclosure is incomplete or incorrect in any material respect.

(b-1) The disclosure required by Subsection (b)(2) for each expert witness must contain:

(1) a complete statement of all opinions the disclosing party will elicit from the witness;

(2) the bases and reasons for those opinions;

(3) the witness's qualifications, including a list of all publications authored by the witness in the previous 10 years; and

(4) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition.

The disclosure must be approved and signed by the witness, unless the disclosing party states in the disclosure why the witness's signature could not be obtained through reasonable efforts or has previously provided a report signed by the witness containing the information required by this subsection.

(b-2) (a) Subsections (b) and (b-1) do not require the disclosure of:

(1) an expert witness who will not testify, including a consulting expert;

(2) reports, memoranda, or other documents made by a party or by a party's attorney or agent during the investigation or defence or prosecution of the case, other than the disclosure itself and a scientific or medical report of a testifying expert witness; or

(3) any statement of the defendant.

(b) A defendant's duty to make a disclosure under Subsection (b) arises only if the state has complied with its duties under

Subsections (a) and (h) of this article and, on request, with Subsections (b) and (b-1) as to the state's expert witnesses.

(c) On motion of a party and for good cause shown, the court may deny, restrict, or defer a disclosure required by Subsection (b) or (b-1), or order in camera inspection of a disclosure, to protect witness safety, an ongoing investigation, or a privilege recognised by law.

(o) (a) If a party fails to comply with Subsection (b) or (b-1), the court may:

(1) order the party to make the disclosure and specify the time, place, and manner of the disclosure and prescribe other just terms and conditions;

(2) grant a continuance;

(3) on finding on the record that the failure to comply was material to the requesting party's ability to prepare to meet the expert evidence, include in the court's charge to the jury an instruction in substantially the following form:

"You have heard evidence that a party failed to provide expert witness disclosure required by law. You may consider that failure, if you find that it occurred, in evaluating the weight and credibility of the expert testimony offered by that party. You are not required to draw any particular conclusion from the failure, and the failure is not, by itself, evidence that any element of

the offense charged has or has not been proved.";

(4) prohibit the party from introducing the undisclosed expert evidence, subject to Subsection (o)(b); or

(5) enter any other order that is just under the circumstances.

(b) The court may not prohibit a defendant from introducing expert evidence under Subsection (o)(a)(4) unless the court finds on the record that:

(1) the failure to comply was willful or in bad faith;

(2) the undisclosed expert evidence is material;

(3) the failure to comply prejudiced the state's ability to prepare to meet the expert evidence; and

(4) a continuance, an instruction under Subsection (o)(a)(3), or another lesser sanction would not cure the prejudice.

SECTION 2. NON-DILUTION. The changes in law made by this Act do not diminish, and may not be construed to diminish, any duty of the state under Article 39.14(a), (h), or (k), Code of Criminal Procedure, or any right of a defendant under Article 39.14, Code of Criminal Procedure, or other law.

SECTION 3. APPLICABILITY. This Act applies only to a trial in which jury selection begins on or after the effective date of this Act or, in a trial without a jury, in which the presentation of evidence begins on or after the effective date of this Act.

SECTION 4. 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 severable.

SECTION 5. EFFECTIVE DATE. This Act takes effect September 1, 2027.