

By: Keel

H.B. No. 48

A BILL TO BE ENTITLED

AN ACT

relating to disposal of an exhibit in a capital case.

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

SECTION 1. Article 2.21, Code of Criminal Procedure, is amended by amending Subsections (e)-(j) and adding Subsection (g-1) to read as follows:

(e) An eligible exhibit may be disposed of as provided by this article:

(1) on or after the first anniversary of the date on which a conviction becomes final in the case, if the case is a misdemeanor or a felony for which the sentence imposed by the court is five years or less; ~~[or]~~

(2) on or after the second anniversary of the date on which a conviction becomes final in the case, if the case is a non-capital felony for which the sentence imposed by the court is greater than five years; or

(3) on or after the fifth anniversary of the death of a defendant, if the case is a capital felony for which the sentence imposed by the court is death.

(f) A clerk in a county with a population of 1.7 million or more may dispose of an eligible exhibit described by Subsection (e)(1) or (2) on the date provided by Subsection (e) ~~[of this article]~~ if on that date the clerk has not received a request for the exhibit from either the attorney representing the state in the

1 case or the attorney representing the defendant. Disposal of an
2 exhibit described by Subsection (e)(3) is governed by Subsection
3 (g-1).

4 (g) A clerk in a county with a population of less than 1.7
5 million must provide written notice by mail to the attorney
6 representing the state in the case and the attorney representing
7 the defendant before disposing of an eligible exhibit described by
8 Subsection (e)(1) or (2).

9 (g-1) Each clerk must provide written notice by mail to the
10 attorney representing the state in the case and the attorney of last
11 record representing the defendant before disposing of an eligible
12 exhibit described by Subsection (e)(3).

13 (h) The notice under Subsections [~~Subsection~~] (g) and (g-1)
14 [~~of this article~~] must:

15 (1) describe the eligible exhibit;

16 (2) give the name and address of the court holding the
17 exhibit; and

18 (3) state that the eligible exhibit will be disposed
19 of unless a written request is received by the clerk before the 31st
20 day after the date of notice.

21 (i) If a request is not received by a clerk covered by
22 Subsection (g) or (g-1) [~~of this article~~] before the 31st day after
23 the date of notice, the clerk may dispose of the eligible exhibit.

24 (j) If a request is timely received, the clerk shall:

25 (1) deliver the eligible exhibit to the person making
26 the request if the court determines the requestor is the owner of
27 the eligible exhibit; or

1 (2) for an eligible exhibit described by Subsection
2 (e)(3), retain the exhibit if either the attorney representing the
3 state in the case or the attorney of last record representing the
4 defendant objects to disposal of the exhibit.

5 SECTION 2. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2005.