By: Hinojosa of Hidalgo S.B. No. 426

A BILL TO BE ENTITLED

AN ACT

relating to the testing of evidence containing biological materials in capital cases.

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

SECTION 1. Articles 38.43(i), (j), and (k), Code of Criminal Procedure, are amended to read as follows:

(i) Before a defendant is tried for a capital offense in which the state is seeking the death penalty, subject to Subsection (j), the state shall require either the Department of Public Safety through one of its laboratories or a laboratory accredited under Article 38.01 to perform nuclear DNA testing, in accordance with the laboratory's capabilities at the time the testing is performed, on any biological evidence that was collected as part of an investigation of the offense and is in the possession of the state. The laboratory that performs the nuclear DNA testing shall pay for all nuclear DNA testing performed in accordance with this subsection.

(j) As soon as practicable after the defendant is charged with a capital offense, or on a motion by the state or the defendant in a capital case, unless the state has affirmatively waived the death penalty in writing, the court shall order the state, a subject matter expert from the laboratory required to perform the testing under Subsection (i), and the defendant to meet and confer about which biological materials collected as part of an investigation of

the offense qualify as biological evidence that is required to be tested under that subsection [~~Subsection (i)~~]. If the state, the subject matter expert, and the defendant agree on which biological materials constitute biological evidence, the biological evidence shall be tested in accordance with Subsection (i). If the state, the subject matter expert, and the defendant do not agree on which biological materials qualify as biological evidence, the state or the defendant may request the court to hold a hearing to determine the issue. On receipt of a request for a hearing under this subsection, the court shall set a date for the hearing and provide written notice of the hearing date to the state, the laboratory required to perform the testing, and the defendant. At the hearing, there is a rebuttable presumption that the biological material that the defendant requests to be tested constitutes biological evidence that is required to be tested under Subsection (i). This subsection does not in any way prohibit the state from testing biological evidence in the state's possession.

(k) If an item of biological evidence is destroyed or lost as a result of nuclear DNA testing performed under Subsection (i), the laboratory that tested the evidence must provide to the defendant any bench notes prepared by the laboratory that are related to the testing of the evidence and the results of that testing.

SECTION 2. Article 38.43, Code of Criminal Procedure, as amended by this Act, applies to a capital case for which the indictment was filed on or after the effective date of this Act. A capital case for which the indictment was filed before the

effective date of this Act is governed by the law in effect on the date the indictment was filed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2027.