

By: Paxton

S.B. No. 836

A BILL TO BE ENTITLED

AN ACT

1
2 relating to victims of sex offenses, sex-based human trafficking
3 offenses, or acts of a sexual nature and to the confidentiality of
4 or restrictions on the availability of certain property, material,
5 or information regarding those victims, offenses, or acts.

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

7 SECTION 1. Article 38.435, Code of Criminal Procedure, is
8 amended to read as follows:

9 Art. 38.435. PROHIBITED USE OF EVIDENCE FROM FORENSIC
10 MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT OR OTHER
11 SEX OFFENSE; PLACEMENT UNDER SEAL. (a) Evidence collected during a
12 forensic medical examination conducted under Subchapter G, Chapter
13 56A, may not be used to investigate or prosecute a misdemeanor
14 offense, or an offense under Subchapter D, Chapter 481, Health and
15 Safety Code, alleged to have been committed by the victim from whom
16 the evidence was collected.

17 (b) During the course of a criminal hearing or proceeding,
18 the court may not make available or allow to be made available for
19 copying or dissemination to the public any property or material
20 related to or derived from evidence described by Subsection (a),
21 including a visual image or a recording made as part of the
22 examination.

23 (c) The court shall place property or material described by
24 Subsection (a) under seal of the court on the conclusion of the

1 hearing or proceeding.

2 (d) The attorney representing the state shall be provided
3 access to property or material described by Subsection (a). In the
4 manner provided by Article 39.152, the defendant, the defendant's
5 attorney, and any individual the defendant seeks to qualify to
6 provide expert testimony at trial shall be provided access to the
7 property or material described by Subsection (a).

8 (e) A court that places under seal property or material
9 described by Subsection (a) may issue an order lifting the seal on a
10 finding that the order is in the best interest of the public.

11 SECTION 2. The heading to Article 38.451, Code of Criminal
12 Procedure, is amended to read as follows:

13 Art. 38.451. EVIDENCE DEPICTING INVASIVE VISUAL RECORDING
14 [~~OF CHILD~~].

15 SECTION 3. Article 38.451(a), Code of Criminal Procedure,
16 is amended to read as follows:

17 (a) During the course of a criminal hearing or proceeding
18 concerning an offense under Section 21.15, Penal Code, [~~that was~~
19 ~~committed against a child younger than 14 years of age,~~] the court
20 may [~~shall~~] not make available or allow to be made available for
21 [~~the~~] copying or dissemination to the public property or material
22 that constitutes or contains a visual image, as described by
23 Section 21.15(b), Penal Code, [~~of a child younger than 14 years of~~
24 ~~age~~] and that was seized by law enforcement based on a reasonable
25 suspicion that an offense under that subsection has been committed.

26 SECTION 4. Article 39.14(a), Code of Criminal Procedure, is
27 amended to read as follows:

1 (a) Subject to the restrictions provided by Section
2 264.408, Family Code, Subchapter D, Chapter 420, Government Code,
3 and Articles [Article] 39.15, 39.151, 39.152, and 39.153 of this
4 code, as soon as practicable after receiving a timely request from
5 the defendant the state shall produce and permit the inspection and
6 the electronic duplication, copying, and photographing, by or on
7 behalf of the defendant, of any offense reports, any designated
8 documents, papers, written or recorded statements of the defendant
9 or a witness, including witness statements of law enforcement
10 officers but not including the work product of counsel for the state
11 in the case and their investigators and their notes or report, or
12 any designated books, accounts, letters, photographs, or objects or
13 other tangible things not otherwise privileged that constitute or
14 contain evidence material to any matter involved in the action and
15 that are in the possession, custody, or control of the state or any
16 person under contract with the state. The state may provide to the
17 defendant electronic duplicates of any documents or other
18 information described by this article. The rights granted to the
19 defendant under this article do not extend to written
20 communications between the state and an agent, representative, or
21 employee of the state. This article does not authorize the removal
22 of the documents, items, or information from the possession of the
23 state, and any inspection shall be in the presence of a
24 representative of the state.

25 SECTION 5. The heading to Article 39.151, Code of Criminal
26 Procedure, is amended to read as follows:

27 Art. 39.151. DISCOVERY OF EVIDENCE DEPICTING INVASIVE

1 VISUAL RECORDING [~~OF CHILD~~].

2 SECTION 6. Article 39.151(a), Code of Criminal Procedure,
3 is amended to read as follows:

4 (a) In the manner provided by this article, a court shall
5 allow discovery of property or material that constitutes or
6 contains a visual image, as described by Section 21.15(b), Penal
7 Code, [~~of a child younger than 14 years of age~~] and that was seized
8 by law enforcement based on a reasonable suspicion that an offense
9 under that subsection has been committed.

10 SECTION 7. Chapter 39, Code of Criminal Procedure, is
11 amended by adding Articles 39.152 and 39.153 to read as follows:

12 Art. 39.152. DISCOVERY OF PROPERTY OR MATERIAL FROM
13 FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT
14 OR OTHER SEX OFFENSE. (a) In the manner provided by this article, a
15 court shall allow discovery of property or material that
16 constitutes or contains a visual image or a recording that was made
17 as part of a forensic medical examination.

18 (b) Property or material described by Subsection (a) must
19 remain in the care, custody, or control of the court or the state,
20 as provided by Article 38.435.

21 (c) A court shall deny any request by a defendant to copy,
22 photograph, duplicate, or otherwise reproduce any property or
23 material described by Subsection (a), provided that the state makes
24 the property or material reasonably available to the defendant.

25 (d) For purposes of Subsection (c), property or material is
26 considered to be reasonably available to the defendant if, at a
27 facility under the control of the state, the state provides ample

1 opportunity for the inspection, viewing, and examination of the
2 property or material by the defendant, the defendant's attorney,
3 and any individual the defendant seeks to qualify to provide expert
4 testimony at trial.

5 Art. 39.153. DISCOVERY OF COMMUNICATION OR RECORD THAT IS
6 CONFIDENTIAL OR PRIVILEGED BY LAW. (a) This article applies only
7 to a communication or record collected during the investigation of
8 an offense under:

9 (1) Section 21.02, 21.11, 21.15, 22.011, 22.012, or
10 22.021, Penal Code;

11 (2) Section 20A.02(a)(3), (4), (7), or (8), Penal
12 Code; or

13 (3) Section 20A.03, Penal Code, if the offense is
14 based partly or wholly on conduct that constitutes an offense
15 described by Subdivision (2).

16 (b) In the manner provided by this article, a court shall
17 allow discovery of a communication or record described by
18 Subsection (a) that is otherwise confidential or privileged by law.

19 (c) Not later than the 30th day before the date the trial is
20 scheduled to begin, a defendant in a criminal action for an offense
21 described by Subsection (a) may make a motion for disclosure of a
22 communication or record that is confidential or privileged by law.
23 The motion must include a supporting affidavit showing reasonable
24 grounds to believe the confidential or privileged communication or
25 record contains exculpatory evidence.

26 (d) The defendant shall serve the motion on the attorney
27 representing the state, the victim or the victim's representative,

1 and the person who is the subject of the grant of confidentiality or
2 who holds the privilege with regard to the communication or record
3 at issue.

4 (e) The court shall provide the victim the opportunity to
5 retain counsel to respond to the defendant's motion.

6 (f) After a hearing on the defendant's motion, the court
7 shall order the confidential or privileged communication or record
8 to be produced for the court under seal and shall examine the
9 communication or record in camera if the court finds by a
10 preponderance of the evidence that:

11 (1) there is a good-faith, specific, and reasonable
12 basis for believing that the confidential or privileged
13 communication or record is relevant, material, and exculpatory on
14 the issue of guilt for the offense charged; and

15 (2) the confidential or privileged communication or
16 record would not be duplicative of other evidence or information
17 available or already obtained by the defendant.

18 (g) The court shall disclose to the defendant and to the
19 state only the evidence that the court finds to be exculpatory on
20 the issue of guilt for the offense charged.

21 SECTION 8. Article 58.102, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 58.102. DESIGNATION OF PSEUDONYM; PSEUDONYM FORM. (a)
24 A victim may choose a pseudonym to be used instead of the victim's
25 name to designate the victim in all public files and records
26 concerning the offense, including police summary reports, press
27 releases, and records of judicial proceedings. A victim who elects

1 to use a pseudonym as provided by this subchapter must complete a
2 pseudonym form developed under Subsection (b) and return the form
3 to the law enforcement agency investigating the offense or to the
4 office of the attorney representing the state prosecuting the
5 offense.

6 (b) The Sexual Assault Prevention and Crisis Services
7 Program of the office of the attorney general shall develop and
8 distribute to all law enforcement agencies of the state and to each
9 office of the attorney representing the state a pseudonym form to
10 record the name, address, telephone number, and pseudonym of a
11 victim.

12 SECTION 9. Article 58.103, Code of Criminal Procedure, is
13 amended to read as follows:

14 Art. 58.103. VICTIM INFORMATION CONFIDENTIAL. (a) A
15 victim who completes a pseudonym form and returns the form to the
16 law enforcement agency investigating the offense or to the office
17 of the attorney representing the state prosecuting the offense may
18 not be required to disclose the victim's name, address, and
19 telephone number in connection with the investigation or
20 prosecution of the offense.

21 (b) A law enforcement agency or an office of the attorney
22 representing the state receiving a pseudonym form under Subsection
23 (a) shall send a copy of the form to each other agency or office
24 investigating or prosecuting the offense.

25 (c) A completed and returned pseudonym form is confidential
26 and may not be disclosed to any person other than a defendant in the
27 case or the defendant's attorney, except as provided by Subsection

1 (b) or by [~~on an~~] order of a court. The court finding required by
2 Article 58.104 is not required to disclose the confidential
3 pseudonym form to the defendant in the case or to the defendant's
4 attorney.

5 (d) A [~~(c) If a victim completes a pseudonym form and~~
6 ~~returns the form to a law enforcement agency under Article~~
7 ~~58.102(a), the~~] law enforcement agency receiving the form or a copy
8 of the form shall:

9 (1) remove the victim's name and substitute the
10 pseudonym for the name on all reports, files, and records in the
11 agency's possession; and

12 (2) [~~notify the attorney representing the state of the~~
13 ~~pseudonym and that the victim has elected to be designated by the~~
14 ~~pseudonym; and~~

15 [~~(3)~~] maintain the form in a manner that protects the
16 confidentiality of the information contained on the form.

17 (e) An office of the attorney representing the state
18 receiving the form or a copy of the form shall:

19 (1) remove the victim's name and substitute the
20 pseudonym for the name on all reports, files, and records in the
21 office's possession;

22 (2) maintain the form in a manner that protects the
23 confidentiality of the information contained on the form; and

24 (3) [~~(d) An attorney representing the state who~~
25 ~~receives notice that a victim has elected to be designated by a~~
26 ~~pseudonym shall]~~ ensure that the victim is designated by the
27 pseudonym in all legal proceedings concerning the offense.

1 SECTION 10. Chapter 21, Government Code, is amended by
2 adding Section 21.014 to read as follows:

3 Sec. 21.014. ELECTRONIC TRANSMISSION OF COURT PROCEEDINGS
4 IN CERTAIN CASES PROHIBITED. (a) This section applies to the
5 following:

6 (1) criminal or civil court proceedings relating to an
7 offense under:

8 (A) Section 21.02, 21.11, 21.15, 22.011, 22.012,
9 or 22.021, Penal Code;

10 (B) Section 20A.02(a)(3), (4), (7), or (8), Penal
11 Code; or

12 (C) Section 20A.03, Penal Code, if the offense is
13 based partly or wholly on conduct that constitutes an offense
14 described by Paragraph (B); and

15 (2) court proceedings relating to:

16 (A) a protective order under Chapter 7B, Code of
17 Criminal Procedure;

18 (B) a magistrate's order for emergency
19 protection issued under Article 17.292, Code of Criminal Procedure;

20 (C) a protective order issued under Section
21 6.504, Family Code; or

22 (D) a protective order issued under Chapter 85,
23 Family Code.

24 (b) A court may not allow the electronic transmission or
25 broadcasting of court proceedings described by Subsection (a) in
26 which evidence or testimony is offered that depicts or describes
27 acts of a sexual nature unless the court provides notice to and

1 receives express consent for the transmission or broadcasting from:

2 (1) the victim or the parent, conservator, or guardian
3 of the victim, as applicable;

4 (2) the attorney representing the state; and

5 (3) the defendant.

6 SECTION 11. Subchapter C, Chapter 552, Government Code, is
7 amended by adding Section 552.1082 to read as follows:

8 Sec. 552.1082. EXCEPTION: CERTAIN ELECTRONIC INFORMATION
9 HELD BY PROSECUTOR, LAW ENFORCEMENT AGENCY, OR CORRECTIONS AGENCY.

10 (a) Information held by a prosecutor, law enforcement agency, or
11 corrections agency is excepted from the requirements of Section
12 552.021 if the information:

13 (1) was obtained, or is a copy of information
14 obtained, from:

15 (A) an electronic communication device;

16 (B) a computer, tablet, or other similar device;

17 or

18 (C) a disk, flash drive, or other electronic
19 storage device;

20 (2) was obtained by any prosecutor, law enforcement
21 agency, or corrections agency:

22 (A) during the course of the detection,
23 investigation, or prosecution of an offense under:

24 (i) Section 21.02, 21.11, 21.15, 22.011,
25 22.012, or 22.021, Penal Code;

26 (ii) Section 20A.02(a)(3), (4), (7), or
27 (8), Penal Code; or

1 (iii) Section 20A.03, Penal Code, if the
2 offense is based partly or wholly on conduct that constitutes an
3 offense described by Subparagraph (ii); and

4 (B) in a manner related to the detection,
5 investigation, or prosecution of a crime described by Paragraph
6 (A); and

7 (3) was not written or produced by a prosecutor, law
8 enforcement agency, or corrections agency.

9 (b) Subject to Subsection (c), a governmental body may
10 redact information described by Subsection (a) from any information
11 the governmental body discloses under Section 552.021 without the
12 necessity of requesting a decision from the attorney general under
13 Subchapter G.

14 (c) A governmental body that redacts or withholds
15 information under Subsection (b) shall provide a written notice to
16 the requestor:

17 (1) stating that information is being withheld from
18 the requestor as provided by this section;

19 (2) identifying the device described by Subsection
20 (a)(1) from which the information was obtained; and

21 (3) including, if known, the name of the person who
22 owned or possessed the device from which the information was
23 obtained at the time the device was obtained by a prosecutor, law
24 enforcement agency, or corrections agency.

25 SECTION 12. (a) Articles 38.435, 38.451, 39.14, and
26 39.151, Code of Criminal Procedure, as amended by this Act, and
27 Articles 39.152 and 39.153, Code of Criminal Procedure, and Section

1 21.014, Government Code, as added by this Act, apply only to a court
2 hearing or proceeding that commences on or after the effective date
3 of this Act. A court hearing or proceeding that commences before
4 the effective date of this Act is governed by the law in effect on
5 the date the hearing or proceeding commenced, and the former law is
6 continued in effect for that purpose.

7 (b) Section 552.1082, Government Code, as added by this Act,
8 applies only to a request for public information received by a
9 governmental body on or after the effective date of this Act.

10 SECTION 13. This Act takes effect September 1, 2025.