

BILL ANALYSIS

S.B. 634
By: Hegar
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, defendants charged with possession or promotion of child pornography are able to retain copies of the evidence against them, including child pornography.

S.B. 634 prohibits defendants from retaining child pornography. The defendant, his or her counsel, and any witness they wish to provide expert testimony would all retain the right to review and consider the evidence at the office of the attorney representing the state.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Senate Bill 634 amends the Code of Criminal Procedure, and provides that during the course of a criminal hearing or proceeding, the court is not allowed to make available or allow to be made available for copying or dissemination to the public, property or material that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code. The court must place this property or material under seal of the court on conclusion of the criminal hearing or proceeding. The state's attorney is required to be provided access to this property or material. The defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial must be provided access to this property or material, in the manner provided by Article 39.15, Code of Criminal Procedure. A court that places this property or material under seal is allowed to issue an order lifting the seal on a finding that the order is in the best interest of the public.

The bill adds that a court must allow discovery under Article 39.14, Code of Criminal Procedure, of property or material that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code. This property or material must remain in the care, custody, or control of the court or the state as provided by 38.45, Code of Criminal Procedure. A court must deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any of this property or material, provided that the state makes this property or material reasonably available to the defendant. Property or material is considered to be reasonably available to the defendant if, at a facility under the control of the state, the state provides ample opportunity for the inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial. The bill makes a conforming change and that except as provided by Article 39.15, Code of Criminal Procedure, the court must order the state before or during trial to produce and permit the inspection and copying or photographing of certain evidence.

EFFECTIVE DATE

September 1, 2007.