

1-1 By: Hegar S.B. No. 634
1-2 (In the Senate - Filed February 13, 2007; February 27, 2007,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 16, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 16, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 634 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the sealing of and discovery procedures relating to
1-11 evidence that constitutes child pornography in a criminal hearing
1-12 or proceeding.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 38, Code of Criminal Procedure, is
1-15 amended by adding Article 38.45 to read as follows:

1-16 Art. 38.45. EVIDENCE THAT CONSTITUTES CHILD PORNOGRAPHY.

1-17 (a) During the course of a criminal hearing or proceeding, the
1-18 court may not make available or allow to be made available for
1-19 copying or dissemination to the public property or material that
1-20 constitutes child pornography, as described by Section
1-21 43.26(a)(1), Penal Code.

1-22 (b) The court shall place property or material described by
1-23 Subsection (a) under seal of the court on conclusion of the criminal
1-24 hearing or proceeding.

1-25 (c) The attorney representing the state shall be provided
1-26 access to property or material described by Subsection (a). In the
1-27 manner provided by Article 39.15, the defendant, the defendant's
1-28 attorney, and any individual the defendant seeks to qualify to
1-29 provide expert testimony at trial shall be provided access to
1-30 property or material described by Subsection (a).

1-31 (d) A court that places property or material described by
1-32 Subsection (a) under seal may issue an order lifting the seal on a
1-33 finding that the order is in the best interest of the public.

1-34 SECTION 2. Subsection (a), Article 39.14, Code of Criminal
1-35 Procedure, is amended to read as follows:

1-36 (a) Upon motion of the defendant showing good cause therefor
1-37 and upon notice to the other parties, except as provided by Article
1-38 39.15, the court in which an action is pending shall order the State
1-39 before or during trial of a criminal action therein pending or on
1-40 trial to produce and permit the inspection and copying or
1-41 photographing by or on behalf of the defendant of any designated
1-42 documents, papers, written statement of the defendant, (except
1-43 written statements of witnesses and except the work product of
1-44 counsel in the case and their investigators and their notes or
1-45 report), books, accounts, letters, photographs, objects or
1-46 tangible things not privileged, which constitute or contain
1-47 evidence material to any matter involved in the action and which are
1-48 in the possession, custody or control of the State or any of its
1-49 agencies. The order shall specify the time, place and manner of
1-50 making the inspection and taking the copies and photographs of any
1-51 of the aforementioned documents or tangible evidence; provided,
1-52 however, that the rights herein granted shall not extend to written
1-53 communications between the State or any of its agents or
1-54 representatives or employees. Nothing in this Act shall authorize
1-55 the removal of such evidence from the possession of the State, and
1-56 any inspection shall be in the presence of a representative of the
1-57 State.

1-58 SECTION 3. Chapter 39, Code of Criminal Procedure, is
1-59 amended by adding Article 39.15 to read as follows:

1-60 Art. 39.15. DISCOVERY OF EVIDENCE THAT CONSTITUTES CHILD
1-61 PORNOGRAPHY. (a) In the manner provided by this article, a court
1-62 shall allow discovery under Article 39.14 of property or material
1-63 that constitutes child pornography, as described by Section

2-1 43.26(a)(1), Penal Code.

2-2 (b) Property or material described by Subsection (a) must
2-3 remain in the care, custody, or control of the court or the state as
2-4 provided by Article 38.45.

2-5 (c) A court shall deny any request by a defendant to copy,
2-6 photograph, duplicate, or otherwise reproduce any property or
2-7 material described by Subsection (a), provided that the state makes
2-8 the property or material reasonably available to the defendant.

2-9 (d) For purposes of Subsection (c), property or material is
2-10 considered to be reasonably available to the defendant if, at a
2-11 facility under the control of the state, the state provides ample
2-12 opportunity for the inspection, viewing, and examination of the
2-13 property or material by the defendant, the defendant's attorney,
2-14 and any individual the defendant seeks to qualify to provide expert
2-15 testimony at trial.

2-16 SECTION 4. This Act takes effect September 1, 2007.

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