

BILL ANALYSIS

H.B. 2067
By: Gallego
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, a defendant charged with possession or promotion of child pornography is able to retain copies of the evidence against him or her, including child pornography.

H.B. 2067 prohibits a defendant from copying, photographing, duplicating, or otherwise reproducing evidence that constitutes child pornography during the course of a criminal hearing or proceeding. The bill requires the court to allow the defendant, the defendant's counsel, and any expert witness for the defense to review and consider the evidence at a facility under the control of 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

H.B. 2067 amends the Code of Criminal Procedure to prohibit a court, during the course of a criminal hearing or proceeding, from making available or allowing to be made available for copying or dissemination to the public property or material that constitutes child pornography and requires the court to place such property or material under seal of the court on conclusion of the criminal hearing or proceeding. The bill requires that the attorney representing the state in the proceeding and, in the manner prescribed by law, the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial be provided access to the property or material. The bill authorizes a court that places this property or material under seal to issue an order lifting the seal on a finding that the order is in the best interest of the public.

H.B. 2067 creates an exception to discovery procedures required under state law for a criminal hearing or proceeding involving evidential property or material that constitutes child pornography, by requiring a court to allow discovery of such property or material requiring such property or material to remain in the care, custody, or control of the court or the state, and requiring the court to deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce this property or material, provided that the state makes the property or material reasonably available to the defendant. The bill establishes that property or material is considered to be reasonably available if, at a state-controlled facility, 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.

EFFECTIVE DATE

September 1, 2009.