

BILL ANALYSIS

S.B. 595
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.

As proposed, S.B. 595 prohibits defendants charged with possession or promotion of child pornography from retaining child pornography. S.B. 595 requires that the defendant, the defendant's counsel, and any expert witness for the defendant and the defendant's council be provided access to the property or material. S.B. 595 requires a court to allow discovery under Article 39.14 (Discovery), Code of Criminal Procedure, of property or material that constitutes child pornography, and establishes provisions for the care, custody, and control of such material and for access to such material by the defendant, the defendant's attorney, or expert witness.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.45, as follows:

Art. 38.45. EVIDENCE THAT CONSTITUTES CHILD PORNOGRAPHY. (a) Prohibits the 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, as described by Section 43.26(a)(1) (relating to a person committing an offense if the person knowingly or intentionally possesses certain visual material of a child engaging in sexual conduct), Penal Code.

(b) Requires the court to place property or material described by Subsection (a) under seal of the court on conclusion of the criminal hearing or proceeding.

(c) Requires the attorney representing the state to be provided access to property or material described by Subsection (a). Requires the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial, in the manner provided by Article 39.15, to be provided access to property or material described by Subsection (a).

(d) Authorizes a court that places property or material described by Subsection (a) under seal to issue an order lifting the seal on a finding that the order is in the best interest of the public.

SECTION 2. Amends Article 39.14(a) (relating to inspection, copying or photographing by or on behalf of the defendant of court evidence), Code of Criminal Procedure, to create an exception under Article 39.15.

SECTION 3. Amends Chapter 39, Code of Criminal Procedure, by adding Article 39.15, as follows:

Art. 39.15. DISCOVERY OF EVIDENCE THAT CONSTITUTES CHILD PORNOGRAPHY. (a) Requires a court, in the manner provided by this article, to allow discovery under Article 39.14 (Discovery) of property or material that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code.

(b) Requires that property or material described by Subsection (a) remain in the care, custody, or control of the court or the state as provided by Article 38.45.

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

(d) Provides that for purposes of Subsection (c), 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.

SECTION 4. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009