

A BILL TO BE ENTITLED

AN ACT

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

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

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

Art. 38.45. EVIDENCE THAT CONSTITUTES CHILD PORNOGRAPHY.

(a) During the course of a criminal hearing or proceeding, the court may not 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.

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

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

(d) A court that places property or material described by Subsection (a) under seal may issue an order lifting the seal on a

1 finding that the order is in the best interest of the public.

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

4 (a) Upon motion of the defendant showing good cause therefor  
5 and upon notice to the other parties, except as provided by Article  
6 39.15, the court in which an action is pending shall order the State  
7 before or during trial of a criminal action therein pending or on  
8 trial to produce and permit the inspection and copying or  
9 photographing by or on behalf of the defendant of any designated  
10 documents, papers, written statement of the defendant, (except  
11 written statements of witnesses and except the work product of  
12 counsel in the case and their investigators and their notes or  
13 report), books, accounts, letters, photographs, objects or  
14 tangible things not privileged, which constitute or contain  
15 evidence material to any matter involved in the action and which are  
16 in the possession, custody or control of the State or any of its  
17 agencies. The order shall specify the time, place and manner of  
18 making the inspection and taking the copies and photographs of any  
19 of the aforementioned documents or tangible evidence; provided,  
20 however, that the rights herein granted shall not extend to written  
21 communications between the State or any of its agents or  
22 representatives or employees. Nothing in this Act shall authorize  
23 the removal of such evidence from the possession of the State, and  
24 any inspection shall be in the presence of a representative of the  
25 State.

26 SECTION 3. Chapter 39, Code of Criminal Procedure, is  
27 amended by adding Article 39.15 to read as follows:

1       Art. 39.15. DISCOVERY OF EVIDENCE THAT CONSTITUTES CHILD  
2 PORNOGRAPHY. (a) In the manner provided by this article, a court  
3 shall allow discovery under Article 39.14 of property or material  
4 that constitutes child pornography, as described by Section  
5 43.26(a)(1), Penal Code.

6       (b) Property or material described by Subsection (a) must  
7 remain in the care, custody, or control of the court or the state as  
8 provided by Article 38.45.

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

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

20       SECTION 4. This Act takes effect September 1, 2009.