

1-1 By: Hegar S.B. No. 595
1-2 (In the Senate - Filed January 30, 2009; February 23, 2009,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 6, 2009, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; April 6, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the sealing of and discovery procedures relating to
1-9 evidence that constitutes child pornography in a criminal hearing
1-10 or proceeding.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Chapter 38, Code of Criminal Procedure, is
1-13 amended by adding Article 38.45 to read as follows:

1-14 Art. 38.45. EVIDENCE THAT CONSTITUTES CHILD PORNOGRAPHY.

1-15 (a) During the course of a criminal hearing or proceeding, the
1-16 court may not make available or allow to be made available for
1-17 copying or dissemination to the public property or material that
1-18 constitutes child pornography, as described by Section
1-19 43.26(a)(1), Penal Code.

1-20 (b) The court shall place property or material described by
1-21 Subsection (a) under seal of the court on conclusion of the criminal
1-22 hearing or proceeding.

1-23 (c) The attorney representing the state shall be provided
1-24 access to property or material described by Subsection (a). In the
1-25 manner provided by Article 39.15, the defendant, the defendant's
1-26 attorney, and any individual the defendant seeks to qualify to
1-27 provide expert testimony at trial shall be provided access to
1-28 property or material described by Subsection (a).

1-29 (d) A court that places property or material described by
1-30 Subsection (a) under seal may issue an order lifting the seal on a
1-31 finding that the order is in the best interest of the public.

1-32 SECTION 2. Subsection (a), Article 39.14, Code of Criminal
1-33 Procedure, is amended to read as follows:

1-34 (a) Upon motion of the defendant showing good cause therefor
1-35 and upon notice to the other parties, except as provided by Article
1-36 39.15, the court in which an action is pending shall order the State
1-37 before or during trial of a criminal action therein pending or on
1-38 trial to produce and permit the inspection and copying or
1-39 photographing by or on behalf of the defendant of any designated
1-40 documents, papers, written statement of the defendant, (except
1-41 written statements of witnesses and except the work product of
1-42 counsel in the case and their investigators and their notes or
1-43 report), books, accounts, letters, photographs, objects or
1-44 tangible things not privileged, which constitute or contain
1-45 evidence material to any matter involved in the action and which are
1-46 in the possession, custody or control of the State or any of its
1-47 agencies. The order shall specify the time, place and manner of
1-48 making the inspection and taking the copies and photographs of any
1-49 of the aforementioned documents or tangible evidence; provided,
1-50 however, that the rights herein granted shall not extend to written
1-51 communications between the State or any of its agents or
1-52 representatives or employees. Nothing in this Act shall authorize
1-53 the removal of such evidence from the possession of the State, and
1-54 any inspection shall be in the presence of a representative of the
1-55 State.

1-56 SECTION 3. Chapter 39, Code of Criminal Procedure, is
1-57 amended by adding Article 39.15 to read as follows:

1-58 Art. 39.15. DISCOVERY OF EVIDENCE THAT CONSTITUTES CHILD
1-59 PORNOGRAPHY. (a) In the manner provided by this article, a court
1-60 shall allow discovery under Article 39.14 of property or material
1-61 that constitutes child pornography, as described by Section
1-62 43.26(a)(1), Penal Code.

1-63 (b) Property or material described by Subsection (a) must
1-64 remain in the care, custody, or control of the court or the state as

2-1 provided by Article 38.45.

2-2 (c) A court shall deny any request by a defendant to copy,
2-3 photograph, duplicate, or otherwise reproduce any property or
2-4 material described by Subsection (a), provided that the state makes
2-5 the property or material reasonably available to the defendant.

2-6 (d) For purposes of Subsection (c), property or material is
2-7 considered to be reasonably available to the defendant if, at a
2-8 facility under the control of the state, the state provides ample
2-9 opportunity for the inspection, viewing, and examination of the
2-10 property or material by the defendant, the defendant's attorney,
2-11 and any individual the defendant seeks to qualify to provide expert
2-12 testimony at trial.

2-13 SECTION 4. This Act takes effect September 1, 2009.

2-14

* * * * *