

## **BILL ANALYSIS**

C.S.H.B. 1309  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that a prosecution for transmitting a text message depicting a minor engaging in sexual conduct can lead to felony convictions and lifelong registration requirements under the sex offender registration program. Interested parties note that there are limited options available to prosecutors in determining how to charge minors who engage in this conduct and that some minors face harsh penalties while others are not charged at all. The interested parties assert that legislation is needed to create a new offense for minors who engage in the possession or promotion of certain visual material depicting a minor. C.S.H.B. 1309 seeks to address this matter and prevent this crime from occurring by educating students about the legal, criminal, emotional, and psychological consequences associated with this crime and about bullying and the connection between bullying, cyberbullying, harassment, and a minor sharing that visual material.

### **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**

C.S.H.B. 1309 amends the Penal Code to create the Class B misdemeanor offense of possession or promotion of certain visual material depicting a minor. The bill makes it an offense for a minor to intentionally or knowingly promote to another minor visual material depicting a minor, including the actor, who is engaging in sexual conduct or to intentionally or knowingly possess visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material.

C.S.H.B. 1309 establishes an affirmative defense to prosecution for the offense if, at the time of the offense, the defendant is any of the following: the spouse of the minor depicted in the visual material; the minor depicted in the visual material, if the visual material is promoted or received only to or from a minor who is the defendant's spouse; not a person who had a reportable conviction or adjudication under the sex offender registration program for any offense and not more than three years older or younger than, and involved in a current dating relationship with, the minor depicted in the visual material; or not a person who had such a reportable conviction or adjudication and the minor depicted in the visual material and not more than three years older or younger than, and involved in a current dating relationship with, the minor to or from whom the visual material was promoted or received.

C.S.H.B. 1309 specifies that if a defendant's conduct constitutes the offense of possession or promotion of certain visual material depicting a minor under the bill's provisions and also constitutes an offense under another law, the defendant may be prosecuted under the bill's provisions, the other law, or both.

C.S.H.B. 1309 establishes that an offense under the bill's provisions is not a lesser included

offense of an offense of the sale, distribution, or display of harmful material to a minor or an offense of possession or promotion of child pornography. The bill defines "minor" and "produce," provides for the meanings of "promote," "sexual conduct," and "visual material" by reference, and provides for the meaning of "dating relationship" by reference to the Family Code.

C.S.H.B. 1309 amends the Code of Criminal Procedure to expand the prohibition against a court making available or allowing to be made available, during the course of a criminal hearing or proceeding, property or material that constitutes child pornography for copying or dissemination to the public to include property and material the possession or promotion of which is prohibited under the offense of possession or promotion of certain visual material depicting a minor. The bill expands the applicability of provisions of law relating to discovery of evidence that constitutes child pornography to include discovery of property or material the possession or promotion of which is prohibited under the offense of possession or promotion of certain visual material depicting a minor. The bill authorizes a court that grants community supervision to a defendant who is convicted of or charged with an offense of possession or promotion of certain visual material depicting a minor to require as a condition of community supervision that the defendant attend and successfully complete an educational program described by the bill's provisions or another equivalent educational program.

C.S.H.B. 1309 amends the Family Code to specify that a violation of the offense of possession or promotion of certain visual material depicting a minor constitutes conduct indicating a need for supervision under the Juvenile Justice Code. The bill authorizes a juvenile court, if a child is found to have engaged in such conduct indicating a need for supervision, to enter an order requiring the child to attend and successfully complete an educational program described by the bill's provisions or another equivalent educational program. The bill requires a juvenile court that enters such an order to require the child or the child's parent or other person responsible for the child's support to pay the cost of attending the educational program if the court determines that the child, parent, or other person is financially able to make payment. The bill authorizes a juvenile court or the juvenile probation department, for a child at sanction level one of the progressive sanctions model, to require the child to attend and successfully complete an educational program described by the bill's provisions or another equivalent educational program.

C.S.H.B. 1309 amends the Education Code to require the Texas School Safety Center, in consultation with the office of the attorney general and not later than January 1, 2012, to develop programs for use by school districts that address certain legal and other consequences and effects, specified by the bill's provisions, of sharing visual material depicting a minor engaged in sexual conduct and that address bullying and the connection between bullying, cyberbullying, harassment, and a minor sharing that visual material. The bill requires each school district, beginning with the 2012-2013 school year, to annually provide or make available information on the programs developed by the center to parents and students in a grade level the district considers appropriate and to provide or to make available the information by any means the district considers appropriate. The bill defines "cyberbullying," provides for the meaning of "bullying" and "harassment" by reference, and provides for the meaning of "sexual conduct" by reference to the Penal Code.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1309 differs from the original by creating the offense of possession or promotion of certain visual material depicting a minor, whereas the original creates the offense of electronic transmission of certain visual material depicting a minor.

C.S.H.B. 1309 contains a provision not included in the original providing for the meaning of "dating relationship." The substitute differs from the original by defining "minor" to mean a person 14 years of age or older and younger than 18 years of age, whereas the original defines that term to mean a person younger than 18 years of age.

C.S.H.B. 1309 differs from the original, in provisions establishing the conduct constituting the offense, by making it an offense to intentionally or knowingly promote to another minor visual material depicting a minor who is engaging in sexual conduct or possess such visual material, if the actor produced the visual material, whereas the original makes it an offense to intentionally or knowingly engage in that promotion by electronic means, if the actor produced the visual material or knows that another minor produced the visual material, or possess in an electronic format such visual material, if the actor produced the visual material or knows that another minor produced the visual material.

C.S.H.B. 1309 differs from the original by establishing an affirmative defense to prosecution for the offense of possession or promotion of certain visual material depicting a minor if, at the time offense, the defendant was the spouse of the minor depicted in the visual material or the defendant and the minor were involved in a current dating relationship under certain circumstances, whereas the original establishes an affirmative defense to prosecution for only the possession in electronic format of visual material depicting another minor engaging in sexual conduct if the defendant did not produce the visual material, possessed the material only after receiving it from another minor, and reported the receipt of the material to a law enforcement agency within a specified period.

C.S.H.B. 1309 differs from the original by making an offense of possession or promotion of certain visual material depicting a minor a Class B misdemeanor, whereas the original makes an offense of electronic transmission of certain visual material depicting a minor a Class C misdemeanor. The substitute omits provisions included in the original enhancing the offense for a previous and subsequent conviction.

C.S.H.B. 1309 differs from the original by specifying that if a defendant's conduct constitutes the offense under the substitute's provisions and also constitutes an offense under another law, the defendant may be prosecuted under either or both laws, whereas the original specifies prosecution only under the original's offense. The substitute contains a provision not included in the original establishing that an offense under the substitute's provisions is not a lesser included offense of an offense of the sale, distribution, or display of harmful material to a minor or an offense of possession or promotion of child pornography.

C.S.H.B. 1309 omits provisions included in the original relating to the authorization for a county, justice, or municipal court to require a defendant convicted of an offense of electronic transmission of certain visual material depicting a minor or the defendant's parent to attend and successfully complete an educational program designed to address certain consequences of engaging in such conduct. The substitute omits provisions included in the original making certain court procedures relating to a plea by a minor and appearance of parent applicable to a defendant younger than 18 years of age charged with an offense of electronic transmission of certain visual material depicting a minor and extending the eligibility of a child to apply to a convicting court of expunction of certain conviction records to a person convicted of not more than one such offense who meets certain requirements.

C.S.H.B. 1309 contains a provision not included in the original authorizing a court that grants community supervision to a defendant convicted of or charged with an offense of possession or promotion of certain visual material depicting a minor to require as a condition of community supervision that the defendant attend and successfully complete an educational program relating to the dangers of students sharing visual material depicting a minor engaged in sexual conduct or another equivalent educational program.

C.S.H.B. 1309 contains a provision not included in the original specifying that a violation of the offense of possession or promotion of certain visual material depicting a minor constitutes conduct indicating a need for supervision.

C.S.H.B. 1309 differs from the original by authorizing a juvenile court to enter an order requiring a child found to have engaged in conduct indicating a need for supervision for the possession or promotion of certain visual material depicting a minor to attend and successfully complete an educational program relating to the dangers of students sharing visual material depicting a minor engaged in sexual conduct or another equivalent educational program, whereas the original authorizes such a court to enter an order requiring a child adjudicated to have engaged in delinquent conduct constituting an offense of electronic transmission of certain visual material depicting a minor or the child's parent to attend and successfully complete an educational program designed to address certain consequences of such an offense.

C.S.H.B. 1309 contains a provision not included in the original authorizing a juvenile court or the juvenile probation department, for a child at sanction level one of the progressive sanctions model, to require the child to attend and successfully complete an educational program relating to the dangers of students sharing visual material depicting a minor engaged in sexual conduct or another equivalent educational program.

C.S.H.B. 1309 differs from the original in nonsubstantive ways and in conforming ways relating to the name of the offense created.