

By: Craddick, Gallego, Menendez, Carter

H.B. No. 1309

Substitute the following for H.B. No. 1309:

By: Gallego

C.S.H.B. No. 1309

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the offense of possession or promotion of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense.

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

SECTION 1. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.261 to read as follows:

Sec. 43.261. POSSESSION OR PROMOTION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR. (a) In this section:

(1) "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.

(2) "Minor" means a person 14 years of age or older and younger than 18 years of age.

(3) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.

(4) "Promote" has the meaning assigned by Section 43.25.

(5) "Sexual conduct" has the meaning assigned by Section 43.25.

(6) "Visual material" has the meaning assigned by Section 43.26.

(b) A person who is a minor commits an offense if the person

intentionally or knowingly:

(1) possesses visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material; or

(2) promotes to another minor visual material depicting a minor, including the actor, who is engaging in sexual conduct.

(c) It is an affirmative defense to prosecution under Subsection (b)(1) or (2) that, at the time of the offense, the defendant is:

(1) the spouse of the minor depicted in the visual material;

(2) 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; or

(3) not a person who had a reportable conviction or adjudication, as defined by Chapter 62, Code of Criminal Procedure, for any offense and:

(A) 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

(B) 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.

(d) An offense under this section is a Class B misdemeanor.

(e) If conduct that constitutes an offense under this

1 section also constitutes an offense under any other law, the
2 defendant may be prosecuted under this section, the other law, or
3 both.

4 (f) An offense under this section is not a lesser included
5 offense of an offense under Section 43.24 or 43.26.

6 SECTION 2. The heading to Article 38.45, Code of Criminal
7 Procedure, is amended to read as follows:

8 Art. 38.45. CERTAIN VISUAL MATERIAL DEPICTING SEXUAL
9 CONDUCT BY [~~EVIDENCE THAT CONSTITUTES~~] CHILD OR MINOR
10 [~~PORNOGRAPHY~~].

11 SECTION 3. Article 38.45(a), Code of Criminal Procedure, is
12 amended to read as follows:

13 (a) During the course of a criminal hearing or proceeding,
14 the court may not make available or allow to be made available for
15 copying or dissemination to the public property or material that:

16 (1) constitutes child pornography, as described by
17 Section 43.26(a)(1), Penal Code; or

18 (2) the possession or promotion of which is prohibited
19 under Section 43.261, Penal Code.

20 SECTION 4. The heading to Article 39.15, Code of Criminal
21 Procedure, is amended to read as follows:

22 Art. 39.15. DISCOVERY OF CERTAIN VISUAL MATERIAL DEPICTING
23 SEXUAL CONDUCT BY [~~EVIDENCE THAT CONSTITUTES~~] CHILD OR MINOR
24 [~~PORNOGRAPHY~~].

25 SECTION 5. Article 39.15(a), Code of Criminal Procedure, is
26 amended to read as follows:

27 (a) In the manner provided by this article, a court shall

1 allow discovery under Article 39.14 of property or material:

2 (1) that constitutes child pornography, as described
3 by Section 43.26(a)(1), Penal Code; or

4 (2) the possession or promotion of which is prohibited
5 under Section 43.261, Penal Code.

6 SECTION 6. Article 42.12, Code of Criminal Procedure, is
7 amended by adding Section 13H to read as follows:

8 Sec. 13H. DEFENDANTS PLACED ON COMMUNITY SUPERVISION FOR
9 POSSESSION OR PROMOTION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR.

10 If a court grants community supervision to a defendant who is
11 convicted of or charged with an offense under Section 43.261, Penal
12 Code, the court may require as a condition of community supervision
13 that the defendant attend and successfully complete an educational
14 program described by Section 37.218, Education Code, or another
15 equivalent educational program.

16 SECTION 7. Section 51.03(b), Family Code, is amended to
17 read as follows:

18 (b) Conduct indicating a need for supervision is:

19 (1) subject to Subsection (f), conduct, other than a
20 traffic offense, that violates:

21 (A) the penal laws of this state of the grade of
22 misdemeanor that are punishable by fine only; or

23 (B) the penal ordinances of any political
24 subdivision of this state;

25 (2) the absence of a child on 10 or more days or parts
26 of days within a six-month period in the same school year or on
27 three or more days or parts of days within a four-week period from

1 school;

2 (3) the voluntary absence of a child from the child's
3 home without the consent of the child's parent or guardian for a
4 substantial length of time or without intent to return;

5 (4) conduct prohibited by city ordinance or by state
6 law involving the inhalation of the fumes or vapors of paint and
7 other protective coatings or glue and other adhesives and the
8 volatile chemicals itemized in Section 485.001, Health and Safety
9 Code;

10 (5) an act that violates a school district's
11 previously communicated written standards of student conduct for
12 which the child has been expelled under Section 37.007(c),
13 Education Code; ~~[or]~~

14 (6) conduct that violates a reasonable and lawful
15 order of a court entered under Section 264.305; or

16 (7) conduct that violates Section 43.261, Penal Code.

17 SECTION 8. Chapter 54, Family Code, is amended by adding
18 Section 54.0404 to read as follows:

19 Sec. 54.0404. POSSESSION OR PROMOTION OF CERTAIN VISUAL
20 MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS. (a) If a child is
21 found to have engaged in conduct indicating a need for supervision
22 described by Section 51.03(b)(7), the juvenile court may enter an
23 order requiring the child to attend and successfully complete an
24 educational program described by Section 37.218, Education Code, or
25 another equivalent educational program.

26 (b) A juvenile court that enters an order under Subsection
27 (a) shall require the child or the child's parent or other person

1 responsible for the child's support to pay the cost of attending an
2 educational program under Subsection (a) if the court determines
3 that the child, parent, or other person is financially able to make
4 payment.

5 SECTION 9. Section 59.004(a), Family Code, is amended to
6 read as follows:

7 (a) For a child at sanction level one, the juvenile court or
8 probation department may:

9 (1) require counseling for the child regarding the
10 child's conduct;

11 (2) inform the child of the progressive sanctions that
12 may be imposed on the child if the child continues to engage in
13 delinquent conduct or conduct indicating a need for supervision;

14 (3) inform the child's parents or guardians of the
15 parents' or guardians' responsibility to impose reasonable
16 restrictions on the child to prevent the conduct from recurring;

17 (4) provide information or other assistance to the
18 child or the child's parents or guardians in securing needed social
19 services;

20 (5) require the child or the child's parents or
21 guardians to participate in a program for services under Section
22 264.302, if a program under Section 264.302 is available to the
23 child or the child's parents or guardians;

24 (6) refer the child to a community-based citizen
25 intervention program approved by the juvenile court; ~~and~~

26 (7) release the child to the child's parents or
27 guardians; and

1 (8) require the child to attend and successfully
2 complete an educational program described by Section 37.218,
3 Education Code, or another equivalent educational program.

4 SECTION 10. Subchapter G, Chapter 37, Education Code, is
5 amended by adding Section 37.218 to read as follows:

6 Sec. 37.218. PROGRAMS ON DANGERS OF STUDENTS SHARING VISUAL
7 MATERIAL DEPICTING MINOR ENGAGED IN SEXUAL CONDUCT. (a) In this
8 section:

9 (1) "Bullying" has the meaning assigned by Section
10 25.0342.

11 (2) "Cyberbullying" means the use of any electronic
12 communication device to engage in bullying or intimidation.

13 (3) "Harassment" has the meaning assigned by Section
14 37.001.

15 (4) "Sexual conduct" has the meaning assigned by
16 Section 43.25, Penal Code.

17 (b) The center, in consultation with the office of the
18 attorney general, shall develop programs for use by school
19 districts that address:

20 (1) the possible legal consequences, including
21 criminal penalties, of sharing visual material depicting a minor
22 engaged in sexual conduct;

23 (2) other possible consequences of sharing visual
24 material depicting a minor engaged in sexual conduct, including:

25 (A) negative effects on relationships;

26 (B) loss of educational and employment
27 opportunities; and

1 (C) possible removal, if applicable, from
2 certain school programs or extracurricular activities;

3 (3) the unique characteristics of the Internet and
4 other communications networks that could affect visual material
5 depicting a minor engaged in sexual conduct, including:

6 (A) search and replication capabilities; and

7 (B) a potentially worldwide audience;

8 (4) the prevention of, identification of, responses
9 to, and reporting of incidents of bullying; and

10 (5) the connection between bullying, cyberbullying,
11 harassment, and a minor sharing visual material depicting a minor
12 engaged in sexual conduct.

13 (c) Each school district shall annually provide or make
14 available information on the programs developed under Subsection
15 (b) to parents and students in a grade level the district considers
16 appropriate. Each district shall provide or make available the
17 information by any means the district considers appropriate.

18 SECTION 11. (a) Not later than January 1, 2012, the Texas
19 School Safety Center shall develop the programs required under
20 Section 37.218(b), Education Code, as added by this Act.

21 (b) Section 37.218(c), Education Code, as added by this Act,
22 applies beginning with the 2012-2013 school year.

23 SECTION 12. This Act takes effect September 1, 2011.