

By: Craddick

H.B. No. 1309

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the creation of the offense of electronic transmission  
3 of certain visual material depicting a minor and to certain  
4 educational programs concerning the prevention and awareness of  
5 that offense.

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

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

9 Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL  
10 MATERIAL DEPICTING A MINOR. (a) In this section:

11 (1) "Minor" means a person younger than 18 years of  
12 age.

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

16 (3) "Promote" has the meaning assigned by Section  
17 43.25.

18 (4) "Sexual conduct" has the meaning assigned by  
19 Section 43.25.

20 (5) "Visual material" has the meaning assigned by  
21 Section 43.26.

22 (b) A person who is a minor commits an offense if the person  
23 intentionally or knowingly:

24 (1) by electronic means promotes to another minor

1 visual material depicting a minor, including the actor, engaging in  
2 sexual conduct, if the actor produced the visual material or knows  
3 that another minor produced the visual material; or

4 (2) possesses in an electronic format visual material  
5 depicting another minor engaging in sexual conduct, if the actor  
6 produced the visual material or knows that another minor produced  
7 the visual material.

8 (c) It is an affirmative defense to prosecution under  
9 Subsection (b)(2) that the defendant:

10 (1) did not produce the visual material;

11 (2) possessed the visual material only after receiving  
12 the material from another minor; and

13 (3) not later than 48 hours after receiving the visual  
14 material from the other minor, reported receipt of the material to a  
15 law enforcement agency.

16 (d) An offense under this section is a Class C misdemeanor,  
17 except that the offense is:

18 (1) a Class B misdemeanor if it is shown on the trial  
19 of the offense that the defendant has previously been convicted one  
20 time of an offense under this section; and

21 (2) a Class A misdemeanor if it is shown on the trial  
22 of the offense that the defendant has previously been convicted two  
23 or more times of an offense under this section.

24 (e) If conduct that constitutes an offense under this  
25 section also constitutes an offense under another section of this  
26 code or any other law, the defendant may be prosecuted only under  
27 this section.

1 SECTION 2. The heading to Chapter 6, Code of Criminal  
2 Procedure, is amended to read as follows:

3 CHAPTER 6. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER  
4 OFFICERS; EDUCATION CONCERNING CONSEQUENCES OF CERTAIN OFFENSES

5 SECTION 3. Chapter 6, Code of Criminal Procedure, is  
6 amended by adding Article 6.09 to read as follows:

7 Art. 6.09. EDUCATIONAL PROGRAMS CONCERNING CERTAIN  
8 OFFENSES COMMITTED BY MINORS; MANDATORY COURT ATTENDANCE. (a) In  
9 this article, "parent" means a natural or adoptive parent, managing  
10 or possessory conservator, or legal guardian. The term does not  
11 include a parent whose parental rights have been terminated.

12 (b) This article applies to a defendant who has not had the  
13 disabilities of minority removed and has been charged with an  
14 offense under Section 43.261, Penal Code.

15 (c) The judge of a county court:

16 (1) must take the defendant's plea in open court; and

17 (2) shall issue a summons to compel the defendant's  
18 parent to be present during:

19 (A) the taking of the defendant's plea; and

20 (B) all other proceedings relating to the case.

21 (d) On a finding by a county court that a defendant has  
22 committed an offense under Section 43.261, Penal Code, the court  
23 may enter an order requiring:

24 (1) the defendant to attend and successfully complete  
25 an educational program designed to address:

26 (A) the possible psychological and social  
27 consequences of engaging in conduct in violation of Section 43.261,

1 Penal Code, including negative effects on relationships and the  
2 loss of educational and employment opportunities; and

3 (B) the possible legal consequences, including  
4 criminal penalties, of engaging in subsequent conduct in violation  
5 of Section 43.261, Penal Code; or

6 (2) if the defendant has not been emancipated by  
7 marriage or court order, the defendant's parent to attend and  
8 successfully complete an educational program described by  
9 Subdivision (1).

10 (e) A court that enters an order under Subsection (d) shall  
11 require the defendant or the defendant's parent to pay the cost of  
12 attending an educational program under Subsection (d) if the court  
13 determines that the defendant or the defendant's parent is  
14 financially able to make payment.

15 SECTION 4. The heading to Article 38.45, Code of Criminal  
16 Procedure, is amended to read as follows:

17 Art. 38.45. CERTAIN VISUAL MATERIAL DEPICTING SEXUAL  
18 CONDUCT BY A [EVIDENCE THAT CONSTITUTES] CHILD OR MINOR  
19 [PORNOGRAPHY].

20 SECTION 5. Article 38.45(a), Code of Criminal Procedure, is  
21 amended to read as follows:

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

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

27 (2) the promotion or possession of which is prohibited

1 under Section 43.261, Penal Code.

2 SECTION 6. The heading to Article 39.15, Code of Criminal  
3 Procedure, is amended to read as follows:

4 Art. 39.15. DISCOVERY OF CERTAIN VISUAL MATERIAL DEPICTING  
5 SEXUAL CONDUCT BY A [EVIDENCE THAT CONSTITUTES] CHILD OR MINOR  
6 [PORNOGRAPHY].

7 SECTION 7. Article 39.15(a), Code of Criminal Procedure, is  
8 amended to read as follows:

9 (a) In the manner provided by this article, a court shall  
10 allow discovery under Article 39.14 of property or material:

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

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

15 SECTION 8. Article 45.0215, Code of Criminal Procedure, is  
16 amended by amending Subsection (a) and adding Subsection (a-1) to  
17 read as follows:

18 (a) This article applies to [If] a defendant who has not had  
19 the disabilities of minority removed and has been:

20 (1) charged with an offense other than an offense  
21 under Section 43.261, Penal Code, if the defendant is younger than  
22 17 years of age; or

23 (2) charged with an offense under Section 43.261,  
24 Penal Code, if the defendant is younger than 18 years of age.

25 (a-1) The [and has not had the disabilities of minority  
26 removed, the] judge or justice:

27 (1) must take the defendant's plea in open court; and

1 (2) shall issue a summons to compel the defendant's  
2 parent, guardian, or managing conservator to be present during:

3 (A) the taking of the defendant's plea; and

4 (B) all other proceedings relating to the case.

5 SECTION 9. The heading to Article 45.0216, Code of Criminal  
6 Procedure, is amended to read as follows:

7 Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS [~~OF~~  
8 ~~CHILDREN~~].

9 SECTION 10. Article 45.0216, Code of Criminal Procedure, is  
10 amended by amending Subsections (b), (d), (f), and (h) and adding  
11 Subsection (f-1) to read as follows:

12 (b) A person may [~~convicted of not more than one offense~~  
13 ~~described by Section 8.07(a)(4) or (5), Penal Code, while the~~  
14 ~~person was a child may, on or after the person's 17th birthday,~~]  
15 apply to the court in which the person [~~child~~] was convicted to have  
16 the conviction expunged as provided by this article:

17 (1) on or after the person's 17th birthday, if the  
18 person was convicted of not more than one offense described by  
19 Section 8.07(a)(4) or (5), Penal Code, while the person was a child;  
20 or

21 (2) on or after the person's 18th birthday, if the  
22 person was convicted of not more than one offense under Section  
23 43.261, Penal Code.

24 (d) The request must contain the person's statement that the  
25 person was not convicted [~~while the person was a child~~] of any  
26 additional offense as described by Subsection (f)(1) or (2), as  
27 applicable [~~Section 8.07(a)(4) or (5), Penal Code, other than the~~

1 ~~offense the person seeks to have expunged~~].

2 (f) The [~~If the court finds that the person was not~~  
3 ~~convicted of any other offense described by Section 8.07(a)(4) or~~  
4 ~~(5), Penal Code, while the person was a child, the~~] court shall  
5 order the conviction, together with all complaints, verdicts,  
6 sentences, and prosecutorial and law enforcement records, and any  
7 other documents relating to the offense, expunged from the person's  
8 record if the court finds that:

9 (1) for a person applying for the expunction of a  
10 conviction for an offense described by Section 8.07(a)(4) or (5),  
11 Penal Code, the person was not convicted of any other offense  
12 described by Section 8.07(a)(4) or (5), Penal Code, while the  
13 person was a child; and

14 (2) for a person applying for the expunction of a  
15 conviction for an offense described by Section 43.261, Penal Code,  
16 the person was not convicted of any other offense described by  
17 Section 43.261, Penal Code.

18 (f-1) After entry of an [~~the~~] order under Subsection (f),  
19 the person is released from all disabilities resulting from the  
20 conviction and the conviction may not be shown or made known for any  
21 purpose.

22 (h) A record [~~Records of a person under 17 years of age~~]  
23 relating to a complaint dismissed as provided by Article 45.051 or  
24 45.052 may be expunged under this article on application of the  
25 following persons:

26 (1) for a complaint alleging an offense other than an  
27 offense under Section 43.261, Penal Code, a person under 17 years of

1 age; and

2 (2) for a complaint alleging an offense under Section  
3 43.261, Penal Code, a person under 18 years of age.

4 SECTION 11. Subchapter B, Chapter 45, Code of Criminal  
5 Procedure, is amended by adding Article 45.061 to read as follows:

6 Art. 45.061. PROCEEDINGS CONCERNING ELECTRONIC  
7 TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING A MINOR. (a) In  
8 this article, "parent" means a natural or adoptive parent, managing  
9 or possessory conservator, or legal guardian. The term does not  
10 include a parent whose parental rights have been terminated.

11 (b) On a finding by a justice or municipal court that a  
12 defendant has committed an offense under Section 43.261, Penal  
13 Code, the court may enter an order requiring:

14 (1) the defendant to attend and successfully complete  
15 an educational program designed to address:

16 (A) the possible psychological and social  
17 consequences of engaging in conduct in violation of Section 43.261,  
18 Penal Code, including negative effects on relationships and the  
19 loss of educational and employment opportunities; and

20 (B) the possible legal consequences, including  
21 criminal penalties, of engaging in subsequent conduct in violation  
22 of Section 43.261, Penal Code; or

23 (2) if the defendant has not been emancipated by  
24 marriage or court order, the defendant's parent to attend and  
25 successfully complete an educational program described by  
26 Subdivision (1).

27 (c) A court that enters an order under Subsection (b) shall



1 require the defendant or the defendant's parent to pay the cost of  
2 attending an educational program under Subsection (b) if the court  
3 determines that the defendant or the defendant's parent is  
4 financially able to make payment.

5 SECTION 12. Chapter 54, Family Code, is amended by adding  
6 Section 54.0404 to read as follows:

7 Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL  
8 MATERIAL DEPICTING A MINOR: EDUCATIONAL PROGRAMS. (a) If a child  
9 is adjudicated to have engaged in delinquent conduct constituting  
10 an offense under Section 43.261, Penal Code, the juvenile court may  
11 enter an order requiring:

12 (1) the child to attend and successfully complete an  
13 educational program designed to address:

14 (A) the possible psychological and social  
15 consequences of engaging in conduct in violation of Section 43.261,  
16 Penal Code, including negative effects on relationships and the  
17 loss of educational and employment opportunities; and

18 (B) the possible legal consequences, including  
19 criminal penalties, of engaging in subsequent conduct in violation  
20 of Section 43.261, Penal Code; or

21 (2) if the child has not been emancipated by marriage  
22 or court order, the child's parent to attend and successfully  
23 complete an educational program described by Subdivision (1).

24 (b) A juvenile court that enters an order under Subsection  
25 (a) shall require the child or the child's parent or other person  
26 responsible for the child's support to pay the cost of attending an  
27 educational program under Subsection (a) if the court determines

1 that the child, parent, or other person is financially able to make  
2 payment.

3 SECTION 13. Subchapter G, Chapter 37, Education Code, is  
4 amended by adding Section 37.218 to read as follows:

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

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

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

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

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

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

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

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

24 (A) negative effects on relationships;

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

27 (C) possible removal, if applicable, from

1 certain school programs or extracurricular activities;

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

5 (A) search and replication capabilities; and

6 (B) a potentially worldwide audience;

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

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

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

17 SECTION 14. (a) Not later than January 1, 2012, the Texas  
18 School Safety Center shall develop the program required under  
19 Section 37.218(b), Education Code, as added by this Act.

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

22 SECTION 15. This Act takes effect September 1, 2011.