

1-1 By: Watson, Hinojosa S.B. No. 407  
1-2 (In the Senate - Filed January 25, 2011; February 2, 2011,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 April 11, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 1; April 11, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 407 By: Huffman

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the creation of the offense of electronic transmission  
1-11 of certain visual material depicting a minor and to certain  
1-12 educational programs concerning the prevention and awareness of  
1-13 that offense.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 37.09, Penal Code, is amended by adding  
1-16 Subsection (c-1) to read as follows:

1-17 (c-1) It is a defense to prosecution under Subsection (a) or  
1-18 (d)(1) that the record, document, or thing was visual material  
1-19 prohibited under Section 43.261 that was destroyed as described by  
1-20 Subsection (f)(3)(B) of that section.

1-21 SECTION 2. Subchapter B, Chapter 43, Penal Code, is amended  
1-22 by adding Section 43.261 to read as follows:

1-23 Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL  
1-24 MATERIAL DEPICTING MINOR. (a) In this section:

1-25 (1) "Dating relationship" has the meaning assigned by  
1-26 Section 71.0021, Family Code.

1-27 (2) "Minor" means a person younger than 18 years of  
1-28 age.

1-29 (3) "Produce" with respect to visual material includes  
1-30 any conduct that directly contributes to the creation or  
1-31 manufacture of the material.

1-32 (4) "Promote" has the meaning assigned by Section  
1-33 43.25.

1-34 (5) "Sexual conduct" has the meaning assigned by  
1-35 Section 43.25.

1-36 (6) "Visual material" has the meaning assigned by  
1-37 Section 43.26.

1-38 (b) A person who is a minor commits an offense if the person  
1-39 intentionally or knowingly:

1-40 (1) by electronic means promotes to another minor  
1-41 visual material depicting a minor, including the actor, engaging in  
1-42 sexual conduct, if the actor produced the visual material or knows  
1-43 that another minor produced the visual material; or

1-44 (2) possesses in an electronic format visual material  
1-45 depicting another minor engaging in sexual conduct, if the actor  
1-46 produced the visual material or knows that another minor produced  
1-47 the visual material.

1-48 (c) An offense under Subsection (b)(1) is a Class C  
1-49 misdemeanor, except that the offense is:

1-50 (1) a Class B misdemeanor if it is shown on the trial  
1-51 of the offense that the actor:

1-52 (A) promoted the visual material to another minor  
1-53 other than a minor with whom the actor had a dating relationship at  
1-54 the time of the offense;

1-55 (B) promoted the visual material with intent to  
1-56 harass, annoy, alarm, abuse, torment, embarrass, or offend another;  
1-57 or

1-58 (C) except as provided by Subdivision (2)(A), has  
1-59 previously been convicted one time of any offense under this  
1-60 section; or

1-61 (2) a Class A misdemeanor if it is shown on the trial  
1-62 of the offense that the actor has previously been:

1-63 (A) convicted one or more times of an offense

2-1 punishable under Subdivision (1)(A) or (B); or  
2-2 (B) convicted two or more times of any offense  
2-3 under this section.  
2-4 (d) An offense under Subsection (b)(2) is a Class C  
2-5 misdemeanor, except that the offense is:  
2-6 (1) a Class B misdemeanor if it is shown on the trial  
2-7 of the offense that the actor has previously been convicted one time  
2-8 of any offense under this section; or  
2-9 (2) a Class A misdemeanor if it is shown on the trial  
2-10 of the offense that the actor has previously been convicted two or  
2-11 more times of any offense under this section.  
2-12 (e) It is an affirmative defense to prosecution under this  
2-13 section that the visual material:  
2-14 (1) depicted only the actor or another minor:  
2-15 (A) who is not more than two years older or  
2-16 younger than the actor and with whom the actor had a dating  
2-17 relationship at the time of the offense; or  
2-18 (B) who was the spouse of the actor at the time of  
2-19 the offense; and  
2-20 (2) was promoted or received only to or from the actor  
2-21 and the other minor.  
2-22 (f) It is an affirmative defense to prosecution under  
2-23 Subsection (b)(2) that the actor:  
2-24 (1) did not produce, promote, or solicit the visual  
2-25 material;  
2-26 (2) possessed the visual material only after receiving  
2-27 the material from another minor; and  
2-28 (3) not later than 48 hours after receiving the visual  
2-29 material from another minor:  
2-30 (A) reported receipt of the material to a law  
2-31 enforcement agency; or  
2-32 (B) destroyed the material.  
2-33 (g) If conduct that constitutes an offense under this  
2-34 section also constitutes an offense under another law, the  
2-35 defendant may be prosecuted under this section, the other law, or  
2-36 both.  
2-37 (h) Notwithstanding Section 51.13, Family Code, a finding  
2-38 that a person has engaged in conduct in violation of this section is  
2-39 considered a conviction for the purposes of Subsections (c) and  
2-40 (d).  
2-41 SECTION 3. Subsection (b), Section 51.03, Family Code, is  
2-42 amended to read as follows:  
2-43 (b) Conduct indicating a need for supervision is:  
2-44 (1) subject to Subsection (f), conduct, other than a  
2-45 traffic offense, that violates:  
2-46 (A) the penal laws of this state of the grade of  
2-47 misdemeanor that are punishable by fine only; or  
2-48 (B) the penal ordinances of any political  
2-49 subdivision of this state;  
2-50 (2) the absence of a child on 10 or more days or parts  
2-51 of days within a six-month period in the same school year or on  
2-52 three or more days or parts of days within a four-week period from  
2-53 school;  
2-54 (3) the voluntary absence of a child from the child's  
2-55 home without the consent of the child's parent or guardian for a  
2-56 substantial length of time or without intent to return;  
2-57 (4) conduct prohibited by city ordinance or by state  
2-58 law involving the inhalation of the fumes or vapors of paint and  
2-59 other protective coatings or glue and other adhesives and the  
2-60 volatile chemicals itemized in Section 485.001, Health and Safety  
2-61 Code;  
2-62 (5) an act that violates a school district's  
2-63 previously communicated written standards of student conduct for  
2-64 which the child has been expelled under Section 37.007(c),  
2-65 Education Code; ~~or~~  
2-66 (6) conduct that violates a reasonable and lawful  
2-67 order of a court entered under Section 264.305; or  
2-68 (7) conduct that violates Section 43.261, Penal Code,  
2-69 and that is punishable as a Class B misdemeanor or any higher

3-1 category of offense.  
3-2 SECTION 4. The heading to Chapter 6, Code of Criminal  
3-3 Procedure, is amended to read as follows:  
3-4 CHAPTER 6. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER  
3-5 OFFICERS; EDUCATION CONCERNING CONSEQUENCES OF CERTAIN OFFENSES  
3-6 SECTION 5. Chapter 6, Code of Criminal Procedure, is  
3-7 amended by adding Article 6.09 to read as follows:  
3-8 Art. 6.09. EDUCATIONAL PROGRAMS CONCERNING CERTAIN  
3-9 OFFENSES COMMITTED BY MINORS; MANDATORY COURT ATTENDANCE. (a) In  
3-10 this article, "parent" means a natural or adoptive parent, managing  
3-11 or possessory conservator, or legal guardian. The term does not  
3-12 include a parent whose parental rights have been terminated.  
3-13 (b) This article applies to a defendant who has not had the  
3-14 disabilities of minority removed and has been charged with an  
3-15 offense under Section 43.261, Penal Code.  
3-16 (c) The judge of a county court:  
3-17 (1) must take the defendant's plea in open court; and  
3-18 (2) shall issue a summons to compel the defendant's  
3-19 parent to be present during:  
3-20 (A) the taking of the defendant's plea; and  
3-21 (B) all other proceedings relating to the case.  
3-22 (d) If a county court finds that a defendant has committed  
3-23 an offense under Section 43.261, Penal Code, the court may enter an  
3-24 order requiring the defendant to attend and successfully complete  
3-25 an educational program described by Section 37.218, Education Code,  
3-26 or another equivalent educational program.  
3-27 (e) A court that enters an order under Subsection (d) shall  
3-28 require the defendant or the defendant's parent to pay the cost of  
3-29 attending an educational program under Subsection (d) if the court  
3-30 determines that the defendant or the defendant's parent is  
3-31 financially able to make payment.  
3-32 SECTION 6. The heading to Article 38.45, Code of Criminal  
3-33 Procedure, is amended to read as follows:  
3-34 Art. 38.45. CERTAIN VISUAL MATERIAL DEPICTING SEXUAL  
3-35 CONDUCT BY [~~EVIDENCE THAT CONSTITUTES~~] CHILD OR MINOR  
3-36 [~~PORNOGRAPHY~~].  
3-37 SECTION 7. Subsection (a), Article 38.45, Code of Criminal  
3-38 Procedure, is amended to read as follows:  
3-39 (a) During the course of a criminal hearing or proceeding,  
3-40 the court may not make available or allow to be made available for  
3-41 copying or dissemination to the public property or material that:  
3-42 (1) constitutes child pornography, as described by  
3-43 Section 43.26(a)(1), Penal Code; or  
3-44 (2) the promotion or possession of which is prohibited  
3-45 under Section 43.261, Penal Code.  
3-46 SECTION 8. The heading to Article 39.15, Code of Criminal  
3-47 Procedure, is amended to read as follows:  
3-48 Art. 39.15. DISCOVERY OF CERTAIN VISUAL MATERIAL DEPICTING  
3-49 SEXUAL CONDUCT BY [~~EVIDENCE THAT CONSTITUTES~~] CHILD OR MINOR  
3-50 [~~PORNOGRAPHY~~].  
3-51 SECTION 9. Subsection (a), Article 39.15, Code of Criminal  
3-52 Procedure, is amended to read as follows:  
3-53 (a) In the manner provided by this article, a court shall  
3-54 allow discovery under Article 39.14 of property or material:  
3-55 (1) that constitutes child pornography, as described  
3-56 by Section 43.26(a)(1), Penal Code; or  
3-57 (2) the promotion or possession of which is prohibited  
3-58 under Section 43.261, Penal Code.  
3-59 SECTION 10. Article 42.12, Code of Criminal Procedure, is  
3-60 amended by adding Section 13H to read as follows:  
3-61 Sec. 13H. DEFENDANTS PLACED ON COMMUNITY SUPERVISION FOR  
3-62 ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL. (a) In this  
3-63 section, "parent" means a natural or adoptive parent, managing or  
3-64 possessory conservator, or legal guardian. The term does not  
3-65 include a parent whose parental rights have been terminated.  
3-66 (b) If a judge grants community supervision to a defendant  
3-67 who is convicted of or charged with an offense under Section 43.261,  
3-68 Penal Code, the judge may require as a condition of community  
3-69 supervision that the defendant attend and successfully complete an

4-1 educational program described by Section 37.218, Education Code, or  
4-2 another equivalent educational program.

4-3 (c) The court shall require the defendant or the defendant's  
4-4 parent to pay the cost of attending an educational program under  
4-5 Subsection (b) if the court determines that the defendant or the  
4-6 defendant's parent is financially able to make payment.

4-7 SECTION 11. Article 45.0215, Code of Criminal Procedure, is  
4-8 amended by amending Subsection (a) and adding Subsection (a-1) to  
4-9 read as follows:

4-10 (a) This article applies to [If] a defendant who has not had  
4-11 the disabilities of minority removed and has been:

4-12 (1) charged with an offense other than an offense  
4-13 under Section 43.261, Penal Code, if the defendant is younger than  
4-14 17 years of age; or

4-15 (2) charged with an offense under Section 43.261,  
4-16 Penal Code, if the defendant is younger than 18 years of age.

4-17 (a-1) The [and has not had the disabilities of minority  
4-18 removed, the] judge or justice:

4-19 (1) must take the defendant's plea in open court; and

4-20 (2) shall issue a summons to compel the defendant's  
4-21 parent, guardian, or managing conservator to be present during:

4-22 (A) the taking of the defendant's plea; and

4-23 (B) all other proceedings relating to the case.

4-24 SECTION 12. The heading to Article 45.0216, Code of  
4-25 Criminal Procedure, is amended to read as follows:

4-26 Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS [~~OF~~  
4-27 ~~CHILDREN~~].

4-28 SECTION 13. Article 45.0216, Code of Criminal Procedure, is  
4-29 amended by amending Subsections (b), (d), and (f) and adding  
4-30 Subsection (f-1) to read as follows:

4-31 (b) A person may [convicted of not more than one offense  
4-32 described by Section 8.07(a)(4) or (5), Penal Code, while the  
4-33 person was a child may, on or after the person's 17th birthday,]  
4-34 apply to the court in which the person [child] was convicted to have  
4-35 the conviction expunged as provided by this article on or after the  
4-36 person's 17th birthday if:

4-37 (1) the person was convicted of not more than one  
4-38 offense described by Section 8.07(a)(4) or (5), Penal Code, while  
4-39 the person was a child; or

4-40 (2) the person was convicted only once of an offense  
4-41 under Section 43.261, Penal Code.

4-42 (d) The request must contain the person's statement that the  
4-43 person was not convicted [while the person was a child] of any  
4-44 additional offense or found to have engaged in conduct indicating a  
4-45 need for supervision as described by Subsection (f)(1) or (2), as  
4-46 applicable [Section 8.07(a)(4) or (5), Penal Code, other than the  
4-47 offense the person seeks to have expunged].

4-48 (f) The [If the court finds that the person was not  
4-49 convicted of any other offense described by Section 8.07(a)(4) or  
4-50 (5), Penal Code, while the person was a child, the] court shall  
4-51 order the conviction, together with all complaints, verdicts,  
4-52 sentences, and prosecutorial and law enforcement records, and any  
4-53 other documents relating to the offense, expunged from the person's  
4-54 record if the court finds that:

4-55 (1) for a person applying for the expunction of a  
4-56 conviction for an offense described by Section 8.07(a)(4) or (5),  
4-57 Penal Code, the person was not convicted of any other offense  
4-58 described by Section 8.07(a)(4) or (5), Penal Code, while the  
4-59 person was a child; and

4-60 (2) for a person applying for the expunction of a  
4-61 conviction for an offense described by Section 43.261, Penal Code,  
4-62 the person was not found to have engaged in conduct indicating a  
4-63 need for supervision described by Section 51.03(b)(7), Family Code,  
4-64 while the person was a child.

4-65 (f-1) After entry of an [the] order under Subsection (f),  
4-66 the person is released from all disabilities resulting from the  
4-67 conviction and the conviction may not be shown or made known for any  
4-68 purpose.

4-69 SECTION 14. Subchapter B, Chapter 45, Code of Criminal

5-1 Procedure, is amended by adding Article 45.061 to read as follows:  
5-2 Art. 45.061. PROCEEDINGS CONCERNING ELECTRONIC  
5-3 TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR. (a) In  
5-4 this article, "parent" means a natural or adoptive parent, managing  
5-5 or possessory conservator, or legal guardian. The term does not  
5-6 include a parent whose parental rights have been terminated.

5-7 (b) If a justice or municipal court finds that a defendant  
5-8 has committed an offense under Section 43.261, Penal Code, the  
5-9 court may enter an order requiring the defendant to attend and  
5-10 successfully complete an educational program described by Section  
5-11 37.218, Education Code, or another equivalent educational program.

5-12 (c) A court that enters an order under Subsection (b) shall  
5-13 require the defendant or the defendant's parent to pay the cost of  
5-14 attending an educational program under Subsection (b) if the court  
5-15 determines that the defendant or the defendant's parent is  
5-16 financially able to make payment.

5-17 SECTION 15. Chapter 54, Family Code, is amended by adding  
5-18 Section 54.0404 to read as follows:

5-19 Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL  
5-20 MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS. (a) If a child  
5-21 is found to have engaged in conduct indicating a need for  
5-22 supervision described by Section 51.03(b)(7), the juvenile court  
5-23 may enter an order requiring the child to attend and successfully  
5-24 complete an educational program described by Section 37.218,  
5-25 Education Code, or another equivalent educational program.

5-26 (b) A juvenile court that enters an order under Subsection  
5-27 (a) shall require the child or the child's parent or other person  
5-28 responsible for the child's support to pay the cost of attending an  
5-29 educational program under Subsection (a) if the court determines  
5-30 that the child, parent, or other person is financially able to make  
5-31 payment.

5-32 SECTION 16. Section 58.003, Family Code, is amended by  
5-33 adding Subsections (c-3) and (c-4) and amending Subsection (d) to  
5-34 read as follows:

5-35 (c-3) Notwithstanding Subsections (a) and (c) and subject  
5-36 to Subsection (b), a juvenile court may order the sealing of records  
5-37 concerning a child found to have engaged in conduct indicating a  
5-38 need for supervision that violates Section 43.261, Penal Code, or  
5-39 taken into custody to determine whether the child engaged in  
5-40 conduct indicating a need for supervision that violates Section  
5-41 43.261, Penal Code, if the child attends and successfully completes  
5-42 an educational program described by Section 37.218, Education Code,  
5-43 or another equivalent educational program. The court may:

5-44 (1) order the sealing of the records immediately and  
5-45 without a hearing; or

5-46 (2) hold a hearing to determine whether to seal the  
5-47 records.

5-48 (c-4) A prosecuting attorney or juvenile probation  
5-49 department may maintain until a child's 17th birthday a separate  
5-50 record of the child's name and date of birth and the date on which  
5-51 the child successfully completed the educational program, if the  
5-52 child's records are sealed under Subsection (c-3). The prosecuting  
5-53 attorney or juvenile probation department, as applicable, shall  
5-54 send the record to the court as soon as practicable after the  
5-55 child's 17th birthday to be added to the child's other sealed  
5-56 records.

5-57 (d) The court may grant the relief authorized in Subsection  
5-58 (a), ~~or~~ (c-1), or (c-3) at any time after final discharge of the  
5-59 person or after the last official action in the case if there was no  
5-60 adjudication, subject, if applicable, to Subsection (e). If the  
5-61 child is referred to the juvenile court for conduct constituting  
5-62 any offense and at the adjudication hearing the child is found to be  
5-63 not guilty of each offense alleged, the court shall immediately and  
5-64 without any additional hearing order the sealing of all files and  
5-65 records relating to the case.

5-66 SECTION 17. Subsection (a), Section 59.004, Family Code, is  
5-67 amended to read as follows:

5-68 (a) For a child at sanction level one, the juvenile court or  
5-69 probation department may:

6-1 (1) require counseling for the child regarding the  
6-2 child's conduct;  
6-3 (2) inform the child of the progressive sanctions that  
6-4 may be imposed on the child if the child continues to engage in  
6-5 delinquent conduct or conduct indicating a need for supervision;  
6-6 (3) inform the child's parents or guardians of the  
6-7 parents' or guardians' responsibility to impose reasonable  
6-8 restrictions on the child to prevent the conduct from recurring;  
6-9 (4) provide information or other assistance to the  
6-10 child or the child's parents or guardians in securing needed social  
6-11 services;

6-12 (5) require the child or the child's parents or  
6-13 guardians to participate in a program for services under Section  
6-14 264.302, if a program under Section 264.302 is available to the  
6-15 child or the child's parents or guardians;

6-16 (6) refer the child to a community-based citizen  
6-17 intervention program approved by the juvenile court; ~~and~~

6-18 (7) release the child to the child's parents or  
6-19 guardians; and

6-20 (8) require the child to attend and successfully  
6-21 complete an educational program described by Section 37.218,  
6-22 Education Code, or another equivalent educational program.

6-23 SECTION 18. Subchapter G, Chapter 37, Education Code, is  
6-24 amended by adding Section 37.218 to read as follows:

6-25 Sec. 37.218. PROGRAMS ON DANGERS OF STUDENTS SHARING VISUAL  
6-26 MATERIAL DEPICTING MINOR ENGAGED IN SEXUAL CONDUCT. (a) In this  
6-27 section:

6-28 (1) "Bullying" has the meaning assigned by Section  
6-29 25.0342.

6-30 (2) "Cyberbullying" means the use of any electronic  
6-31 communication device to engage in bullying or intimidation.

6-32 (3) "Harassment" has the meaning assigned by Section  
6-33 37.001.

6-34 (4) "Sexual conduct" has the meaning assigned by  
6-35 Section 43.25, Penal Code.

6-36 (b) The center, in consultation with the office of the  
6-37 attorney general, shall develop programs for use by school  
6-38 districts that address:

6-39 (1) the possible legal consequences, including  
6-40 criminal penalties, of sharing visual material depicting a minor  
6-41 engaged in sexual conduct;

6-42 (2) other possible consequences of sharing visual  
6-43 material depicting a minor engaged in sexual conduct, including:

6-44 (A) negative effects on relationships;

6-45 (B) loss of educational and employment  
6-46 opportunities; and

6-47 (C) possible removal, if applicable, from  
6-48 certain school programs or extracurricular activities;

6-49 (3) the unique characteristics of the Internet and  
6-50 other communications networks that could affect visual material  
6-51 depicting a minor engaged in sexual conduct, including:

6-52 (A) search and replication capabilities; and

6-53 (B) a potentially worldwide audience;

6-54 (4) the prevention of, identification of, responses  
6-55 to, and reporting of incidents of bullying; and

6-56 (5) the connection between bullying, cyberbullying,  
6-57 harassment, and a minor sharing visual material depicting a minor  
6-58 engaged in sexual conduct.

6-59 (c) Each school district shall annually provide or make  
6-60 available information on the programs developed under Subsection  
6-61 (b) to parents and students in a grade level the district considers  
6-62 appropriate. Each district shall provide or make available the  
6-63 information by any means the district considers appropriate.

6-64 SECTION 19. (a) Not later than January 1, 2012, the Texas  
6-65 School Safety Center shall develop the program required under  
6-66 Subsection (b), Section 37.218, Education Code, as added by this  
6-67 Act.

6-68 (b) Subsection (c), Section 37.218, Education Code, as  
6-69 added by this Act, applies beginning with the 2012-2013 school

7-1 year.

7-2 SECTION 20. This Act takes effect September 1, 2011.

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