

By: Menéndez  
(Miller of Comal)

S.B. No. 1317

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of the offense of invasive visual recording.

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

SECTION 1. The heading to Section 21.15, Penal Code, is amended to read as follows:

Sec. 21.15. INVASIVE [~~IMPROPER PHOTOGRAPHY OR~~] VISUAL RECORDING.

SECTION 2. Sections 21.15(a) and (b), Penal Code, are amended to read as follows:

(a) In this section:

(1) "Female breast" means any portion of the female breast below the top of the areola.

(2) "Intimate area" means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person.

(3) "Changing room" means a room or portioned area provided for or primarily used for the changing of clothing and includes dressing rooms, locker rooms, and swimwear changing areas.

(4) "Promote" [ , "~~promote~~" ] has the meaning assigned by Section 43.21.

(b) A person commits an offense if, without the other person's consent and with intent to invade the privacy of the other person, the person:

(1) photographs or by videotape or other electronic

1 means records, broadcasts, or transmits a visual image of an  
2 intimate area of another person if the other person has a reasonable  
3 expectation that the intimate area is not subject to public view;  
4 ~~[another at a location that is not a bathroom or private dressing~~  
5 ~~room;~~

6 ~~[(A) without the other person's consent; and~~  
7 ~~[(B) with intent to arouse or gratify the sexual~~  
8 ~~desire of any person;]~~

9 (2) photographs or by videotape or other electronic  
10 means records, broadcasts, or transmits a visual image of another  
11 in a bathroom or changing room ~~[another at a location that is a~~  
12 ~~bathroom or private dressing room;~~

13 ~~[(A) without the other person's consent; and~~  
14 ~~[(B) with intent to:~~  
15 ~~[(i) invade the privacy of the other~~  
16 ~~person; or~~  
17 ~~[(ii) arouse or gratify the sexual desire~~  
18 ~~of any person]; or~~

19 (3) knowing the character and content of the  
20 photograph, recording, broadcast, or transmission, promotes a  
21 photograph, recording, broadcast, or transmission described by  
22 Subdivision (1) or (2).

23 SECTION 3. Chapter 38, Code of Criminal Procedure, is  
24 amended by adding Article 38.451 to read as follows:

25 Art. 38.451. EVIDENCE DEPICTING INVASIVE VISUAL RECORDING.  
26 (a) During the course of a criminal hearing or proceeding  
27 concerning an offense under Section 21.15, Penal Code, the court

1 shall not make available or allow to be made available the copying  
2 or dissemination to the public property or material that  
3 constitutes or contains a visual image, as described by Section  
4 21.15(b), Penal Code, that was seized by law enforcement based on a  
5 reasonable suspicion that an offense under that subsection has been  
6 committed.

7 (b) The court shall place property or material described by  
8 Subsection (a) under seal of the court on the conclusion of the  
9 hearing or proceeding.

10 (c) The attorney representing the state shall be provided  
11 access to the property or material described by Subsection (a). In  
12 the manner provided by Article 39.151, the defendant, the  
13 defendant's attorney, and any individual the defendant seeks to  
14 qualify to provide expert testimony at trial shall be provided  
15 access to the property or material provided by Subsection (a).

16 (d) A court that places property or material described by  
17 Subsection (a) under seal may issue an order lifting the seal on a  
18 finding that the order is in the best interest of the public.

19 SECTION 4. Chapter 39, Code of Criminal Procedure, is  
20 amended by adding Article 39.151 to read as follows:

21 Art. 39.151. DISCOVERY OF EVIDENCE DEPICTING INVASIVE  
22 VISUAL RECORDING. (a) In the manner provided by this article, a  
23 court shall allow discovery of property or material that  
24 constitutes or contains a visual image, as described by Section  
25 21.15(b), Penal Code, that was seized by law enforcement based on a  
26 reasonable suspicion that an offense under that subsection has been  
27 committed.

1       (b) Property or material described by Subsection (a) must  
2 remain in the care, custody, or control of the court or the state as  
3 provided by Article 38.451.

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

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

15       SECTION 5. The change in law made by this Act applies only  
16 to an offense committed on or after the effective date of this Act.  
17 An offense committed before the effective date of this Act is  
18 governed by the law in effect on the date the offense was committed,  
19 and the former law is continued in effect for that purpose. For  
20 purposes of this section, an offense was committed before the  
21 effective date of this Act if any element of the offense occurred  
22 before that date.

23       SECTION 6. This Act takes effect immediately if it receives  
24 a vote of two-thirds of all the members elected to each house as  
25 provided by Section 39, Article III, Texas Constitution. If this  
26 Act does not receive the vote necessary for immediate effect, this  
27 Act takes effect September 1, 2015.