

## **BILL ANALYSIS**

C.S.H.B. 1810  
By: Dale  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that there is currently no disincentive for some criminals to possess or promote certain images portraying children depicted in a sexually suggestive manner. C.S.H.B. 1810 seeks to address this issue by creating the offense of possession or promotion of lewd visual material depicting a child.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 1810 amends the Penal Code to create the state jail felony offense of possession or promotion of lewd visual material depicting a child for a person who knowingly possesses, accesses with intent to view, or promotes visual material that depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created, that appeals to the prurient interest in sex, and that has no serious literary, artistic, political, or scientific value. The bill enhances the penalty to a third degree felony if it is shown on the trial of the offense that the person has been previously convicted one time of the offense under the bill's provisions or of an offense of possession or promotion of child pornography. The bill enhances the penalty to a second degree felony if it is shown on the trial of the offense that the person has been previously convicted two or more times of either such offense. The bill establishes that it is not a defense to prosecution for possession or promotion of lewd visual material depicting a child that the depicted child consented to the creation of the visual material.

### **EFFECTIVE DATE**

September 1, 2017.

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

While C.S.H.B. 1810 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.262 to read as follows:

Sec. 43.262. POSSESSION OR PROMOTION OF OBSCENE VISUAL MATERIAL DEPICTING A CHILD.

(a) In this section:

(1) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25.

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

(b) A person commits an offense if the person:

(1) knowingly possesses, accesses with intent to view, or promotes obscene visual material that depicts the lewd exhibition of the genitals or pubic area of a child who is younger than 18 years of age at the time the visual material was created, and who is partially clothed or clothed in inappropriate attire, considering the age of the child, and:

(A) the focal point of the visual material is the child's genitalia or pubic area;

(B) the setting or pose of the child is sexually suggestive or generally associated with sexual conduct;

(C) the child is depicted in an unnatural pose;

(D) the visual material suggests sexual coyness or a willingness to engage in sexual conduct; or

(E) the visual material is intended or designed to elicit a sexual response from the viewer; and

(2) knows that the material depicts the child as described by Subdivision (1).

(c) An offense under this section is a state jail felony, except that the offense is:

(1) a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under this section or Section 43.26; and

(2) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under this section or Section 43.26.

(d) It is not a defense to prosecution under

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.262 to read as follows:

Sec. 43.262. POSSESSION OR PROMOTION OF LEWD VISUAL MATERIAL DEPICTING CHILD.

(a). Same as introduced version.

(b) A person commits an offense if the person

knowingly possesses, accesses with intent to view, or promotes visual material that:

(1) depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created;

(2) appeals to the prurient interest in sex; and

(3) has no serious literary, artistic, political, or scientific value.

(c). Same as introduced version.

(d). Same as introduced version.

this section that the depicted child consented to the creation of the visual material.

SECTION 2. This Act takes effect September 1, 2017.

SECTION 2. Same as introduced version.