

By: Dale

H.B. No. 1810

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the offense of possession or promotion of obscene visual material depicting a child.

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

SECTION 1. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.262 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;

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

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

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

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

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

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

15                    (d) It is not a defense to prosecution under this section  
16 that the depicted child consented to the creation of the visual  
17 material.

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