

By: Moody

H.B. No. 1029

A BILL TO BE ENTITLED

AN ACT

relating to the sealing of and discovery procedures relating to certain recordings of children constituting evidence in a criminal case in a criminal hearing or proceeding.

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

SECTION 1. The heading to Article 38.45, Code of Criminal Procedure, is amended to read as follows:

Art. 38.45. EVIDENCE DEPICTING ~~[OR DESCRIBING ABUSE OF OR]~~ SEXUAL CONDUCT BY CHILD OR MINOR.

SECTION 2. Article 38.45(a), Code of Criminal Procedure, is amended to read as follows:

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

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

(2) the promotion or possession of which is prohibited under Section 43.261, Penal Code~~[, or~~

~~[(3) that is described by Section 2 or 5, Article 38.071, of this code].~~

SECTION 3. Article 39.14, Code of Criminal Procedure, is amended by amending Subsection (f) and adding Subsections (f-1) and (f-2) to read as follows:

(f) Except as provided by Subsection (f-1), the ~~[The]~~

1 attorney representing the defendant, or an investigator, expert,  
2 consulting legal counsel, or agent for the attorney representing  
3 the defendant, may allow a defendant, witness, or prospective  
4 witness to view the information provided under this article, but  
5 may not allow that person to have copies of the information  
6 provided, other than a copy of the witness's own statement. Before  
7 allowing that person to view a document or the witness statement of  
8 another under this subsection, the person possessing the  
9 information shall redact the address, telephone number, driver's  
10 license number, social security number, date of birth, and any bank  
11 account or other identifying numbers contained in the document or  
12 witness statement.

13 (f-1) The attorney representing the defendant, or an  
14 investigator, expert, consulting legal counsel, or agent for the  
15 attorney representing the defendant, may not allow a defendant to  
16 view a recording described by Section 2 or 5, Article 38.071.

17 (f-2) For purposes of Subsection (f) or (f-1) [this  
18 article], the defendant may not be the agent for the attorney  
19 representing the defendant.

20 SECTION 4. The heading to Article 39.15, Code of Criminal  
21 Procedure, is amended to read as follows:

22 Art. 39.15. DISCOVERY OF EVIDENCE DEPICTING ~~[OR DESCRIBING~~  
23 ~~ABUSE OF OR]~~ SEXUAL CONDUCT BY CHILD OR MINOR.

24 SECTION 5. Article 39.15(a), Code of Criminal Procedure, is  
25 amended to read as follows:

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

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

3           (2) the promotion or possession of which is prohibited  
4 under Section 43.261, Penal Code[~~, or~~

5           ~~[(3) that is described by Section 2 or 5, Article~~  
6 ~~38.071, of this code].~~

7           SECTION 6. The change in law made by this Act applies to the  
8 prosecution of an offense committed on or after the effective date  
9 of this Act. The prosecution of an offense committed before the  
10 effective date of this Act is governed by the law in effect on the  
11 date the offense was committed, and the former law is continued in  
12 effect for that purpose. For purposes of this section, an offense  
13 is committed before the effective date of this Act if any element of  
14 the offense occurs before the effective date.

15           SECTION 7. This Act takes effect September 1, 2019.