

By: Crockett

H.B. No. 3869

A BILL TO BE ENTITLED

AN ACT

relating to affirmative defenses to possession of child pornography.

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

SECTION 1. Subchapter A, Section 43, Chapter 26, is amended to read as follows:

Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY.

(a) A person commits an offense if:

(1) the person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8); and

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

(b) In this section:

(1) "Promote" has the meaning assigned by Section 43.25.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(3) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or

1 incorporates in any manner any film, photograph, videotape,
2 negative, or slide; or

3 (B) any disk, diskette, or other physical medium
4 that allows an image to be displayed on a computer or other video
5 screen and any image transmitted to a computer or other video screen
6 by telephone line, cable, satellite transmission, or other method.

7 (c) The affirmative defenses provided by Section ~~43.25(f)~~
8 22.011(d) also apply to a prosecution under this section.

9 (d) An offense under Subsection (a) is a felony of the third
10 degree, except that the offense is:

11 (1) a felony of the second degree if it is shown on the
12 trial of the offense that the person has been previously convicted
13 one time of an offense under that subsection; and

14 (2) a felony of the first degree if it is shown on the
15 trial of the offense that the person has been previously convicted
16 two or more times of an offense under that subsection.

17 (e) A person commits an offense if:

18 (1) the person knowingly or intentionally promotes or
19 possesses with intent to promote material described by Subsection
20 (a)(1); and

21 (2) the person knows that the material depicts the
22 child as described by Subsection (a)(1).

23 (f) A person who possesses visual material that contains six
24 or more identical visual depictions of a child as described by
25 Subsection (a)(1) is presumed to possess the material with the
26 intent to promote the material.

27 (g) An offense under Subsection (e) is a felony of the

1 second degree, except that the offense is a felony of the first
2 degree if it is shown on the trial of the offense that the person has
3 been previously convicted of an offense under that subsection.

4 (h) It is a defense to prosecution under Subsection (a) or
5 (e) that the actor is a law enforcement officer or a school
6 administrator who:

7 (1) possessed or accessed the visual material in good
8 faith solely as a result of an allegation of a violation of Section
9 43.261;

10 (2) allowed other law enforcement or school
11 administrative personnel to possess or access the material only as
12 appropriate based on the allegation described by Subdivision (1);
13 and

14 (3) took reasonable steps to destroy the material
15 within an appropriate period following the allegation described by
16 Subdivision (1).

17 SECTION 2. This Act takes effect September 1, 2021.