

## **BILL ANALYSIS**

Senate Research Center  
88R1367 MEW-D

S.B. 129  
By: Springer  
Criminal Justice  
3/17/2023  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Nothing in history has transformed the character and practice of child sexual exploitation more than the Internet. Individuals who commit child sex crimes use Internet services, social networks, and mobile apps to meet minors and each other in ways they cannot in person and to groom victims by normalizing abusive sexual acts. Tor-based sites on the "black web" focus on child sexual exploitation and support hundreds of thousands of explicit images with hundreds of thousands of active users.

S.B. 129 updates the State's outdated child pornography laws to reflect current technologies and criminal trends so that law enforcement and prosecutors can efficiently protect the most vulnerable in our society—our children. Specifically, S.B. 129 increases charges based on increasing amounts of explicit material rather than charging the defendant for each explicit picture or video. The bill adds enchantment penalties if the person was in an official position of caring for the child at the time of the exploitation.

As proposed, S.B. 129 amends current law relating to the prosecution and punishment for possession of child pornography and increases criminal penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 3.03(b), Penal Code, as follows:

(b) Provides that if the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1)-(2) makes no changes to these subdivisions;

(3) an offense:

(A) under Section 21.15 (Invasive Visual Recording), rather than under Section 21.15 or 43.26 (Possession or Promotion of Child Pornography) regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense under Section 21.15, rather than one offense listed in Paragraph (A) regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections; or

(4)-(7) makes no changes to these subdivisions.

SECTION 2. Amends Section 43.26, Penal Code, by amending Subsection (d) and adding Subsection (d-1), as follows:

(d) Provides that an offense under Subsection (a) (relating to the offense of a person possessing or accessing visual material that depicts a child younger than 18 years of age engaging in sexual conduct) is:

(1) a felony of the third degree if the person possesses visual material that contains fewer than 100 visual depictions of a child as described by Subsection (a)(1) (relating to a person committing an offense by possessing or accessing visual material of a child who is engaging in sexual conduct);

(2) a felony of the second degree if the person possesses visual material that contains 100 or more visual depictions of a child as described by Subsection (a)(1) but fewer than 500 such depictions, rather than a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under that subsection;

(3) a felony of the first degree if the person possesses visual material that contains 500 or more visual depictions of a child as described by Subsection (a)(1), rather than a felony of the first 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 that subsection; or

(4) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that, at the time of the offense, the person was:

(A) an employee at a child-care facility or a residential child-care facility, as those terms are defined by Section 42.002 (Definitions), Human Resources Code;

(B) an employee at a residential treatment facility established under Section 221.056 (Residential Treatment Facility), Human Resources Code;

(C) an employee at a shelter or facility that serves youth and that receives state funds; or

(D) receiving state funds for the care of a child depicted by the visual material.

Makes nonsubstantive changes.

(d-1) Provides that if it is shown on the trial of an offense under Subsection (a) that the visual material depicted a child younger than 10 years of age at the time the image of the child was made or that the defendant has been previously convicted of an offense under that subsection:

(1) an offense described for purposes of punishment by Subsection (d)(1) or (2) is increased to the next higher category of offense; or

(2) the minimum term of confinement for an offense described for purposes of punishment by Subsection (d)(3) is increased to 15 years.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2023.