

By: Moody

H.B. No. 908

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; creating a criminal offense.

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. The heading to Article 39.14, Code of Criminal Procedure, is amended to read as follows:

Art. 39.14. DISCOVERY; OFFENSE.

SECTION 4. Article 39.14, Code of Criminal Procedure, is amended by amending Subsection (f) and adding Subsections (f-1), (f-2), and (f-3) to read as follows:

(f) Except as provided by Subsection (f-1), the ~~[The]~~ attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, may allow a defendant, witness, or prospective witness to view the information provided under this article, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this subsection, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement.

(f-1) The attorney representing the defendant may allow the defendant or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant to view a recording described by Section 2 or 5, Article 38.071, in the presence of the attorney representing the defendant but may not allow any of those persons to have a copy of the recording.

(f-2) A person commits an offense if the person recklessly violates Subsection (f-1). An offense under this subsection is a state jail felony.

(f-3) For purposes of Subsection (f) or (f-1) ~~[this article]~~, the defendant may not be the agent for the attorney

1 representing the defendant.

2 SECTION 5. The heading to Article 39.15, Code of Criminal
3 Procedure, is amended to read as follows:

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

6 SECTION 6. Article 39.15(a), Code of Criminal Procedure, is
7 amended to read as follows:

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

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

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

14 [~~(3) that is described by Section 2 or 5, Article~~
15 ~~38.071, of this code~~].

16 SECTION 7. The change in law made by this Act applies to the
17 prosecution of an offense committed on or after the effective date
18 of this Act. The prosecution of an offense committed before the
19 effective date of this Act is governed by the law in effect on the
20 date the offense was committed, and the former law is continued in
21 effect for that purpose. For purposes of this section, an offense
22 is committed before the effective date of this Act if any element of
23 the offense occurs before the effective date.

24 SECTION 8. This Act takes effect September 1, 2023.