|  |
| --- |
| BILL ANALYSIS |

|  |
| --- |
| C.S.H.B. 267 |
| By: Patterson |
| State Affairs |
| Committee Report (Substituted) |

|  |
| --- |
| **BACKGROUND AND PURPOSE** The bill's author has informed the committee that parents in his district, and around the state, have reported instances in which obscene instructional material has been presented in Texas classrooms, with parents providing examples of school districts displaying sexually explicit and age-inappropriate content to Texas students. The bill's author has further informed the committee that the current affirmative defenses to prosecution for the sale, distribution, or display of harmful material to a minor and for sexual performance by a child are overly broad in the justifications that are covered by the affirmative defenses, with further refinement needed to narrow the scope of what conduct is justifiable. C.S.H.B. 267 seeks to address this issue and protect children from accessing or being exposed to explicit content by revising the affirmative defenses to prosecution for these offenses. |
| **CRIMINAL JUSTICE IMPACT**It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision. |
| **RULEMAKING AUTHORITY** It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution. |
| **ANALYSIS** C.S.H.B. 267 repeals the Penal Code provision that establishes as an affirmative defense to prosecution for the sale, distribution, or display of harmful material to a minor that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification and amends the Penal Code to establish as an affirmative defense to prosecution for the following specific conduct constituting that offense instead that the actor was a judicial or law enforcement officer discharging the officer's official duties at the time of the offense:* selling, distributing, exhibiting, or possessing for sale, distribution, or exhibition to a minor harmful material knowing the person is a minor and knowing that the material is harmful; or
* displaying harmful material and being reckless about whether a minor is present who will be offended or alarmed by the display, and while knowing that the material is harmful.

C.S.H.B. 267 replaces the affirmative defense to prosecution for the offense of sexual performance by a child that the conduct constituting the offense was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, legislative purpose with an affirmative defense to prosecution for that offense that the actor was a judicial or law enforcement officer discharging the officer's official duties at the time of the offense. C.S.H.B. 267 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date. C.S.H.B. 267 repeals Section 43.24(c), Penal Code. |
| **EFFECTIVE DATE** September 1, 2025. |
| **COMPARISON OF INTRODUCED AND SUBSTITUTE**While C.S.H.B. 267 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.The introduced and substitute differ in the following ways with respect to the affirmative defense to prosecution for the sale, distribution, or display of harmful material to a minor:* the introduced changed that defense from the sale, distribution, or exhibition being done by a person having a scientific, educational, governmental, or other similar justification to such actions being done by a person having a bona fide judicial, law enforcement, or legislative justification, whereas the substitute repeals that defense altogether; and
* the substitute additionally establishes as an affirmative defense to prosecution for specified conduct constituting that offense that at the time of the offense the actor was a judicial or law enforcement officer discharging the officer's official duties, whereas the introduced did not establish an additional affirmative defense.

The introduced and substitute both change the affirmative defense to prosecution for the offense of sexual performance by a child that the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose. However, the introduced removed from that defense a bona fide educational, medical, psychological, or psychiatric purpose, while the substitute replaces that affirmative defense with an affirmative defense that the actor was a judicial or law enforcement officer discharging the officer's official duties at the time of the offense. |