

By: Watson

S.B. No. 407

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of the offense of electronic transmission
3 of certain visual material depicting a minor and to certain
4 educational programs concerning the prevention and awareness of
5 that offense.

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

7 SECTION 1. Subchapter B, Chapter 43, Penal Code, is amended
8 by adding Section 43.261 to read as follows:

9 Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL
10 MATERIAL DEPICTING A MINOR. (a) In this section:

11 (1) "Minor" means a person younger than 18 years of
12 age.

13 (2) "Produce" with respect to visual material includes
14 any conduct that directly contributes to the creation or
15 manufacture of the material.

16 (3) "Promote" has the meaning assigned by Section
17 43.25.

18 (4) "Sexual conduct" has the meaning assigned by
19 Section 43.25.

20 (5) "Visual material" has the meaning assigned by
21 Section 43.26.

22 (b) A person who is a minor commits an offense if the person
23 intentionally or knowingly:

24 (1) by electronic means promotes to another minor

1 visual material depicting a minor, including the actor, engaging in
2 sexual conduct, if the actor produced the visual material or knows
3 that another minor produced the visual material; or

4 (2) possesses in an electronic format visual material
5 depicting another minor engaging in sexual conduct, if the actor
6 produced the visual material or knows that another minor produced
7 the visual material.

8 (c) It is an affirmative defense to prosecution under
9 Subsection (b)(2) that the defendant:

10 (1) did not produce the visual material;

11 (2) possessed the visual material only after receiving
12 the material from another minor; and

13 (3) not later than 48 hours after receiving the visual
14 material from the other minor, reported receipt of the material to a
15 law enforcement agency.

16 (d) An offense under this section is a Class C misdemeanor,
17 except that the offense is:

18 (1) a Class B misdemeanor if it is shown on the trial
19 of the offense that the defendant has previously been convicted one
20 time of an offense under this section; and

21 (2) a Class A misdemeanor if it is shown on the trial
22 of the offense that the defendant has previously been convicted two
23 or more times of an offense under this section.

24 (e) If conduct that constitutes an offense under this
25 section also constitutes an offense under another section of this
26 code or any other law, the defendant may be prosecuted only under
27 this section.

1 SECTION 2. The heading to Chapter 6, Code of Criminal
2 Procedure, is amended to read as follows:

3 CHAPTER 6. PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER
4 OFFICERS; EDUCATION CONCERNING CONSEQUENCES OF CERTAIN OFFENSES

5 SECTION 3. Chapter 6, Code of Criminal Procedure, is
6 amended by adding Article 6.09 to read as follows:

7 Art. 6.09. EDUCATIONAL PROGRAMS CONCERNING CERTAIN
8 OFFENSES COMMITTED BY MINORS; MANDATORY COURT ATTENDANCE. (a) In
9 this article, "parent" means a natural or adoptive parent, managing
10 or possessory conservator, or legal guardian. The term does not
11 include a parent whose parental rights have been terminated.

12 (b) This article applies to a defendant who has not had the
13 disabilities of minority removed and has been charged with an
14 offense under Section 43.261, Penal Code.

15 (c) The judge of a county court:

16 (1) must take the defendant's plea in open court; and

17 (2) shall issue a summons to compel the defendant's
18 parent to be present during:

19 (A) the taking of the defendant's plea; and

20 (B) all other proceedings relating to the case.

21 (d) On a finding by a county court that a defendant has
22 committed an offense under Section 43.261, Penal Code, the court
23 may enter an order requiring:

24 (1) the defendant to attend and successfully complete
25 an educational program designed to address:

26 (A) the possible psychological and social
27 consequences of engaging in conduct in violation of Section 43.261,

1 Penal Code, including negative effects on relationships and the
2 loss of educational and employment opportunities; and

3 (B) the possible legal consequences, including
4 criminal penalties, of engaging in subsequent conduct in violation
5 of Section 43.261, Penal Code; or

6 (2) if the defendant has not been emancipated by
7 marriage or court order, the defendant's parent to attend and
8 successfully complete an educational program described by
9 Subdivision (1).

10 (e) A court that enters an order under Subsection (d) shall
11 require the defendant or the defendant's parent to pay the cost of
12 attending an educational program under Subsection (d) if the court
13 determines that the defendant or the defendant's parent is
14 financially able to make payment.

15 SECTION 4. The heading to Article 38.45, Code of Criminal
16 Procedure, is amended to read as follows:

17 Art. 38.45. CERTAIN VISUAL MATERIAL DEPICTING SEXUAL
18 CONDUCT BY A [EVIDENCE THAT CONSTITUTES] CHILD OR MINOR
19 [PORNOGRAPHY].

20 SECTION 5. Article 38.45(a), Code of Criminal Procedure, is
21 amended to read as follows:

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

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

27 (2) the promotion or possession of which is prohibited

1 under Section 43.261, Penal Code.

2 SECTION 6. The heading to Article 39.15, Code of Criminal
3 Procedure, is amended to read as follows:

4 Art. 39.15. DISCOVERY OF CERTAIN VISUAL MATERIAL DEPICTING
5 SEXUAL CONDUCT BY A [EVIDENCE THAT CONSTITUTES] CHILD OR MINOR
6 [PORNOGRAPHY].

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

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

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

13 (2) the promotion or possession of which is prohibited
14 under Section 43.261, Penal Code.

15 SECTION 8. Article 45.0215, Code of Criminal Procedure, is
16 amended by amending Subsection (a) and adding Subsection (a-1) to
17 read as follows:

18 (a) This article applies to [If] a defendant who has not had
19 the disabilities of minority removed and has been:

20 (1) charged with an offense other than an offense
21 under Section 43.261, Penal Code, if the defendant is younger than
22 17 years of age; or

23 (2) charged with an offense under Section 43.261,
24 Penal Code, if the defendant is younger than 18 years of age.

25 (a-1) The [and has not had the disabilities of minority
26 removed, the] judge or justice:

27 (1) must take the defendant's plea in open court; and

1 (2) shall issue a summons to compel the defendant's
2 parent, guardian, or managing conservator to be present during:

3 (A) the taking of the defendant's plea; and

4 (B) all other proceedings relating to the case.

5 SECTION 9. The heading to Article 45.0216, Code of Criminal
6 Procedure, is amended to read as follows:

7 Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS [~~OF~~
8 ~~CHILDREN~~].

9 SECTION 10. Article 45.0216, Code of Criminal Procedure, is
10 amended by amending Subsections (b), (d), (f), and (h) and adding
11 Subsection (f-1) to read as follows:

12 (b) A person may [~~convicted of not more than one offense~~
13 ~~described by Section 8.07(a)(4) or (5), Penal Code, while the~~
14 ~~person was a child may, on or after the person's 17th birthday,~~]
15 apply to the court in which the person [~~child~~] was convicted to have
16 the conviction expunged as provided by this article:

17 (1) on or after the person's 17th birthday, if the
18 person was convicted of not more than one offense described by
19 Section 8.07(a)(4) or (5), Penal Code, while the person was a child;
20 or

21 (2) on or after the person's 18th birthday, if the
22 person was convicted of not more than one offense under Section
23 43.261, Penal Code.

24 (d) The request must contain the person's statement that the
25 person was not convicted [~~while the person was a child~~] of any
26 additional offense as described by Subsection (f)(1) or (2), as
27 applicable [~~Section 8.07(a)(4) or (5), Penal Code, other than the~~

1 ~~offense the person seeks to have expunged].~~

2 (f) The [~~If the court finds that the person was not~~
3 ~~convicted of any other offense described by Section 8.07(a)(4) or~~
4 ~~(5), Penal Code, while the person was a child, the]~~ court shall
5 order the conviction, together with all complaints, verdicts,
6 sentences, and prosecutorial and law enforcement records, and any
7 other documents relating to the offense, expunged from the person's
8 record if the court finds that:

9 (1) for a person applying for the expunction of a
10 conviction for an offense described by Section 8.07(a)(4) or (5),
11 Penal Code, the person was not convicted of any other offense
12 described by Section 8.07(a)(4) or (5), Penal Code, while the
13 person was a child; and

14 (2) for a person applying for the expunction of a
15 conviction for an offense described by Section 43.261, Penal Code,
16 the person was not convicted of any other offense described by
17 Section 43.261, Penal Code.

18 (f-1) After entry of an [the] order under Subsection (f),
19 the person is released from all disabilities resulting from the
20 conviction and the conviction may not be shown or made known for any
21 purpose.

22 (h) A record [~~Records of a person under 17 years of age~~]
23 relating to a complaint dismissed as provided by Article 45.051 or
24 45.052 may be expunged under this article on application of the
25 following persons:

26 (1) for a complaint alleging an offense other than an
27 offense under Section 43.261, Penal Code, a person under 17 years of

1 age; and

2 (2) for a complaint alleging an offense under Section
3 43.261, Penal Code, a person under 18 years of age.

4 SECTION 11. Subchapter B, Chapter 45, Code of Criminal
5 Procedure, is amended by adding Article 45.061 to read as follows:

6 Art. 45.061. PROCEEDINGS CONCERNING ELECTRONIC
7 TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING A MINOR. (a) In
8 this article, "parent" means a natural or adoptive parent, managing
9 or possessory conservator, or legal guardian. The term does not
10 include a parent whose parental rights have been terminated.

11 (b) On a finding by a justice or municipal court that a
12 defendant has committed an offense under Section 43.261, Penal
13 Code, the court may enter an order requiring:

14 (1) the defendant to attend and successfully complete
15 an educational program designed to address:

16 (A) the possible psychological and social
17 consequences of engaging in conduct in violation of Section 43.261,
18 Penal Code, including negative effects on relationships and the
19 loss of educational and employment opportunities; and

20 (B) the possible legal consequences, including
21 criminal penalties, of engaging in subsequent conduct in violation
22 of Section 43.261, Penal Code; or

23 (2) if the defendant has not been emancipated by
24 marriage or court order, the defendant's parent to attend and
25 successfully complete an educational program described by
26 Subdivision (1).

27 (c) A court that enters an order under Subsection (b) shall

1 require the defendant or the defendant's parent to pay the cost of
2 attending an educational program under Subsection (b) if the court
3 determines that the defendant or the defendant's parent is
4 financially able to make payment.

5 SECTION 12. Chapter 54, Family Code, is amended by adding
6 Section 54.0404 to read as follows:

7 Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL
8 MATERIAL DEPICTING A MINOR: EDUCATIONAL PROGRAMS. (a) If a child
9 is adjudicated to have engaged in delinquent conduct constituting
10 an offense under Section 43.261, Penal Code, the juvenile court may
11 enter an order requiring:

12 (1) the child to attend and successfully complete an
13 educational program designed to address:

14 (A) the possible psychological and social
15 consequences of engaging in conduct in violation of Section 43.261,
16 Penal Code, including negative effects on relationships and the
17 loss of educational and employment opportunities; and

18 (B) the possible legal consequences, including
19 criminal penalties, of engaging in subsequent conduct in violation
20 of Section 43.261, Penal Code; or

21 (2) if the child has not been emancipated by marriage
22 or court order, the child's parent to attend and successfully
23 complete an educational program described by Subdivision (1).

24 (b) A juvenile court that enters an order under Subsection
25 (a) shall require the child or the child's parent or other person
26 responsible for the child's support to pay the cost of attending an
27 educational program under Subsection (a) if the court determines

1 that the child, parent, or other person is financially able to make
2 payment.

3 SECTION 13. Subchapter G, Chapter 37, Education Code, is
4 amended by adding Section 37.218 to read as follows:

5 Sec. 37.218. PROGRAMS ON DANGERS OF STUDENTS SHARING VISUAL
6 MATERIAL DEPICTING A MINOR ENGAGED IN SEXUAL CONDUCT. (a) In this
7 section:

8 (1) "Bullying" has the meaning assigned by Section
9 25.0342.

10 (2) "Cyberbullying" means the use of any electronic
11 communication device to engage in bullying or intimidation.

12 (3) "Harassment" has the meaning assigned by Section
13 37.001.

14 (4) "Sexual conduct" has the meaning assigned by
15 Section 43.25, Penal Code.

16 (b) The center, in consultation with the office of the
17 attorney general, shall develop programs for use by school
18 districts that address:

19 (1) the possible legal consequences, including
20 criminal penalties, of sharing visual material depicting a minor
21 engaged in sexual conduct;

22 (2) other possible consequences of sharing visual
23 material depicting a minor engaged in sexual conduct, including:

24 (A) negative effects on relationships;

25 (B) loss of educational and employment
26 opportunities; and

27 (C) possible removal, if applicable, from

1 certain school programs or extracurricular activities;

2 (3) the unique characteristics of the Internet and
3 other communications networks that could affect visual material
4 depicting a minor engaged in sexual conduct, including:

5 (A) search and replication capabilities; and

6 (B) a potentially worldwide audience;

7 (4) the prevention of, identification of, responses
8 to, and reporting of incidents of bullying; and

9 (5) the connection between bullying, cyberbullying,
10 harassment, and a minor sharing visual material depicting a minor
11 engaged in sexual conduct.

12 (c) Each school district shall annually provide or make
13 available information on the programs developed under Subsection
14 (b) to parents and students in a grade level the district considers
15 appropriate. Each district shall provide or make available the
16 information by any means the district considers appropriate.

17 SECTION 14. (a) Not later than January 1, 2012, the Texas
18 School Safety Center shall develop the program required under
19 Section 37.218(b), Education Code, as added by this Act.

20 (b) Section 37.218(c), Education Code, as added by this Act,
21 applies beginning with the 2012-2013 school year.

22 SECTION 15. This Act takes effect September 1, 2011.