

SUBJECT: Sealing of child pornography evidence in a criminal hearing or proceeding

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo

0 nays

2 absent — Christian, Riddle

WITNESSES: For — (*Registered, but did not testify:* Marc Chavez, Lubbock County District Attorney's Office; Katrina Daniels, Bexar County District Attorney Susan D. Reed; Kevin Petroff, Harris County District Attorney's Office; Ballard C. Shapleigh, 34th Judicial District Attorney Jaime Esparza; Katherine Zackel, Texans Care for Children)

Against — None

On — Angela Goodwin, Office of the Attorney General

BACKGROUND: Under Code of Criminal Procedure, art. 39.14 if a defense motion shows good cause, the court in which an action is pending must order the state to produce, and permit the defendant to inspect and copy or photograph, any document or tangible object that constitutes or contains evidence material to any matter involved in the action and is in the possession, custody or control of the state or any of its agencies. Written witness statements, state attorney work product, and privileged information are excepted from this requirement.

Penal Code, sec. 43.26 defines "child pornography" as any visual material that visually depicts a child younger than 18 years of age, at the time the image of the child was made, engaging in sexual conduct.

DIGEST: HB 2067 would amend Code of Criminal Procedure, art. 39.14 by excepting from disclosure evidence that constituted child pornography.

The court would be required to deny any request by a defendant to copy, photograph, or reproduce any property or material that constituted child

pornography, provided the state made the property reasonably available to the defendant. Such evidence would be considered to be reasonably available to the defendant if, at a state-controlled facility, the state provided ample opportunity for the inspection, viewing, and examination of the evidence by the defendant, defendant's attorney, and any person the defendant sought to have qualified to provide expert testimony. The evidence would have to remain in the care, custody, or control of the court or the state.

The court would be prohibited, during a criminal proceeding, from making available to the public property or material that constituted child pornography. The state attorney would be provided access to this evidence.

The court would be required to place property or material that constituted child pornography under seal of the court on conclusion of the criminal hearing or proceeding and could issue an order to lift the seal upon finding that the order was in the best interest of the public.

This bill would take effect September 1, 2009.

NOTES:

The companion bill, SB 595 by Hegar, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 16 and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 30, making it eligible to be considered in lieu of HB 2067.