

## **BILL ANALYSIS**

Senate Research Center  
78R1607 GWK-D

S.B. 1092  
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Criminal Justice  
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As Filed

### **DIGEST AND PURPOSE**

The United States Supreme Court recently ruled that “virtual” images cannot be deemed as illegal child pornography because an actual child was not exploited in the process. However, numerous prosecutors believe that child pornographers will claim that their images are “virtual,” in order to avoid harsh penalties. As proposed, S.B. 1092 requires defense counsel to provide notice to the court not later than the 10th day before trial if the defendant plans to offer evidence to establish that the material in question either does not depict a person at all or depicts a person who was 18 years of age at the time of the offense.

### **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 43.26, Penal Code, by adding Subsection (h), as follows:

(h) Authorizes the defendant, in a prosecution under this section, to offer evidence to establish that the material does not depict a person or depicts a person who was 18 years of age or older at the time of the commission of the offense only if the attorney representing the defendant provides notice of that intention to the court and the attorney representing the state not later than the 10th day before the date on which the trial on the merits commences.

SECTION 2. (a) Provides that the change in law made by this Act applies only to the prosecution of an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) Provides that the prosecution of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2003.