

BILL ANALYSIS

Senate Research Center
82R3976 SJM/VOO-D

S.B. 407
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Criminal Justice
3/25/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the act of sending a sexually explicit text message, otherwise known as "sexting," can be prosecuted under adult pornography laws which can lead to felony convictions and possible lifelong registration requirements with the Texas Sex Offender Registration Program. As a result, some prosecutors may feel that they have only two options for dealing with minors who engage in "sexting"—charge juveniles with crimes that have overly harsh penalties, or enter no charges at all.

The purpose of S.B. 407 is to create a new offense of "sexting" in state law, to establish a "tiered" approach to prosecuting "sexting" by minors so the punishment truly matches the crime, and to prevent "sexting" from occurring by educating students—and their parents—about the criminal, emotional, psychological, and other consequences associated with this crime.

S.B. 407 amends the Texas Penal Code to create a new offense of "sexting" that more appropriately addresses criminal activity that can currently be prosecuted under the adult pornography laws listed in Section 43.26 (Possession or Promotion of Child Pornography), Penal Code, or the online solicitation of a minor laws found in Section 33.021 (Online Solicitation of A Minor), Penal Code. S.B. 407 creates a Class C misdemeanor applicable to minors under the age of 18 who produce, promote, or possess an electronic image depicting another minor engaging in sexual conduct.

S.B. 407 creates a graduated penalty structure for minors under 18 who engage in "sexting," whereby a subsequent offense would be a Class B misdemeanor. Penalties associated with this crime would be capped at a Class A misdemeanor and there is an affirmative defense for a minor who receives an unsolicited "sext."

S.B. 407 will give the courts discretion to require minors younger than 18 who are convicted or adjudicated of the offense of "sexting" to participate in educational programs that emphasize the psychological, social, and legal consequences associated with this crime. The courts would also have discretion to require parents of those minors to participate in such programs.

S.B. 407 provides certain minors who have been convicted of the offense of "sexting" with the opportunity to have their criminal records expunged. This gives the minor an opportunity to apply for college and gain meaningful employment without the stigma of a sexual felony conviction.

Furthermore, the Code of Criminal Procedure is amended to ensure that the images associated with the prosecution of this offense are not made available in a public record.

Lastly, S.B. 407 requires the Texas School Safety Center, in consultation with the office of the attorney general, to develop programs for use by school districts that address psychological, social, and legal consequences associated with this crime. School districts will be required to provide information on these programs to parents and students of grade levels the district believes appropriate and by any means the district sees fit.

As proposed, S.B. 407 amends current law relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that 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 Subchapter B, Chapter 43, Penal Code, by adding Section 43.261, as follows:

Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING A MINOR. (a) Defines "minor," "produce," "promote," "sexual conduct," and "visual material" in this section.

(b) Provides that a person who is a minor commits an offense if the person intentionally or knowingly:

(1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or

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

(c) Provides that it is an affirmative defense to prosecution under Subsection (b)(2) that the defendant:

(1) did not produce the visual material;

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

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

(d) Provides that an offense under this section is a Class C misdemeanor, except that the offense is:

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

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

(e) Provides that if conduct that constitutes an offense under this section also constitutes an offense under another section of this code or any other law, the defendant may be prosecuted only under this section.

SECTION 2. Amends the heading to Chapter 6, Code of Criminal Procedure, to read as follows:

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

SECTION 3. Amends Chapter 6, Code of Criminal Procedure, by adding Article 6.09, as follows:

Art. 6.09. EDUCATIONAL PROGRAMS CONCERNING CERTAIN OFFENSES COMMITTED BY MINORS; MANDATORY COURT ATTENDANCE. (a) Defines "parent" in this article.

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

(c) Requires the judge of a county court:

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

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

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

(B) all other proceedings relating to the case.

(d) Authorizes the court, on a finding by a county court that a defendant has committed an offense under Section 43.261, Penal Code, to enter an order requiring:

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

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

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

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

(e) Requires a court that enters an order under Subsection (d) to require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (d) if the court determines that the defendant or the defendant's parent is financially able to make payment.

SECTION 4. Amends the heading to Article 38.45, Code of Criminal Procedure, to read as follows:

Art. 38.45. CERTAIN VISUAL MATERIAL DEPICTING SEXUAL CONDUCT BY A CHILD OR MINOR.

SECTION 5. Amends Article 38.45(a), Code of Criminal Procedure, as follows:

(a) Prohibits a court, during the course of a criminal hearing or proceeding, from making available or allowing to be made available for copying or dissemination to the public property or material that:

(1) 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.

SECTION 6. Amends the heading to Article 39.15, Code of Criminal Procedure, to read as follows:

Art. 39.15. DISCOVERY OF CERTAIN VISUAL MATERIAL DEPICTING SEXUAL CONDUCT BY A CHILD OR MINOR.

SECTION 7. Amends Article 39.15(a), Code of Criminal Procedure, as follows:

(a) Requires a court to allow, in the manner provided by this article, discovery under Article 39.14 (Discovery) of 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.

SECTION 8. Amends Article 45.0215, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that this article applies to a defendant who has not had the disabilities of minority removed and has been:

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

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

(a-1) Creates this subsection from existing text. Makes conforming changes.

SECTION 9. Amends the heading to Article 45.0216, Code of Criminal Procedure, to read as follows:

Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS

SECTION 10. Amends Article 45.0216, Code of Criminal Procedure, by amending Subsections (b), (d), (f), and (h) and adding Subsection (f-1), as follows:

(b) Authorizes a person to apply to the court in which the person was convicted to have the conviction expunged as provided by this article:

(1) on or after the person's 17th birthday, if the person was convicted of not more than one offense described by Section 8.07(a)(4) (relating to a misdemeanor punishable by fine only) or (5) (relating to a violation of a penal ordinance of a political subdivision), Penal Code, while the person was a child; or

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

Makes conforming and nonsubstantive changes.

(d) Requires that the request contain the person's statement that the person was not convicted of any additional offense as described by Subsection (f)(1) or (2), as applicable. Makes conforming and nonsubstantive changes.

(f) Requires the court to order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record if the court finds that:

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

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

Makes conforming and nonsubstantive changes.

(f-1) Provides that after entry of an order under Subsection (f), the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose. Makes a nonsubstantive change.

(h) Authorizes a record relating to a complaint dismissed as provided by Article 45.051 (suspension of Sentence and Deferral of Final Disposition) or 45.052 (Dismissal of Misdemeanor Charge on Completion of Teen Court Program) to be expunged under this article on application of the following persons:

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

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

Makes conforming and nonsubstantive changes.

SECTION 11. Amends Subchapter B, Chapter 45, Code of Criminal Procedure, by adding Article 45.061, as follows:

Art. 45.061. PROCEEDINGS CONCERNING ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING A MINOR. (a) Defines "parent" in this article.

(b) Authorizes the court to enter, on a finding by a justice or municipal court that a defendant has committed an offense under Section 43.261, Penal Code, an order requiring:

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

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

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

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

(c) Requires a court that enters an order under Subsection (b) to require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (b) if the court determines that the defendant or the defendant's parent is financially able to make payment.

SECTION 12. Amends Chapter 54, Family Code, by adding Section 54.0404, as follows:

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

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

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

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

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

(b) Requires a juvenile court that enters an order under Subsection (a) to require the child or the child's parent or other person responsible for the child's support to pay the cost of attending an educational program under Subsection (a) if the court determines that the child, parent, or other person is financially able to make payment.

SECTION 13. Amends Subchapter G, Chapter 37, Education Code, by adding Section 37.218, as follows:

Sec. 37.218. PROGRAMS ON DANGERS OF STUDENTS SHARING VISUAL MATERIAL DEPICTING A MINOR ENGAGED IN SEXUAL CONDUCT. (a) Defines "bullying," "cyberbullying," "harassment," and "sexual conduct" in this section.

(b) Requires the Texas School Safety Center, in consultation with the office of the attorney general, to develop programs for use by school districts that address:

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

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

(A) negative effects on relationships;

(B) loss of educational and employment opportunities; and

(C) possible removal, if applicable, from certain school programs or extracurricular activities;

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

(A) search and replication capabilities; and

(B) a potentially worldwide audience;

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

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

(c) Requires each school district to annually provide or make available information on the programs developed under Subsection (b) to parents and students in a grade level the district considers appropriate. Requires each district to provide or make available the information by any means the district considers appropriate.

SECTION 14. (a) Requires the Texas School Safety Center, not later than January 1, 2012, to develop the program required under Section 37.218(b), Education Code, as added by this Act.

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

SECTION 15. Effective date: September 1, 2011.