

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 407
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Criminal Justice
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Committee Report (Substituted)

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 C.S.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 about the criminal, emotional, psychological, and other consequences associated with this crime.

C.S.S.B. 407 also 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 and bullying.

C.S.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 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:

(A) reported receipt of the material to a law enforcement agency; or

(B) destroyed the material.

(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 law, the defendant may be prosecuted under this section, the other law, or both.

SECTION 2. Amends Section 51.03(b), Family Code, to provide that conduct indicating a need for supervision includes among certain conduct, is subject to Subsection (f) other than a traffic offense or conduct described by Subdivision (7), that violates the penal laws of this state of the grade of misdemeanor that are punishable by fine only, or the penal ordinances of any political subdivision of this state; or conduct that violates Section 43.261, Penal Code. Makes nonsubstantive changes.

SECTION 3. 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 4. 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, if a county court finds 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 5. 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 6. 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 7. 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 8. 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 9. Amends Article 42.12, Code of Criminal Procedure, by adding Section 13H, as follows:

Sec. 13H. DEFENDANTS PLACED ON COMMUNITY SUPERVISION FOR ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL. (a) Defines, in this section, "parent."

(b) Authorizes a judge, if a judge grants community supervision, including deferred adjudication community supervision, to a defendant who is convicted of or charged with an offense under Section 43.261, Penal Code, to require as a condition of community supervision that the defendant attend and successfully complete an educational program designed to address:

(1) 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

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

(c) Requires the court 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 10. 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 11. Amends the heading to Article 45.0216, Code of Criminal Procedure, to read as follows:

Art. 45.0216. EXPUNCTION OF CERTAIN CONVICTION RECORDS

SECTION 12. Amends Article 45.0216, Code of Criminal Procedure, by amending Subsections (b), (d), (f), and adding Subsection (f-1), as follows:

(b) Authorizes a person to apply to the court in which the person, rather than the child, was convicted to have the conviction expunged as provided by this article on or after the person's 17th birthday if:

(1) 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) the person was convicted of not more than one offense under Section 43.261, Penal Code.

Makes nonsubstantive changes.

(d) Requires that the request contain the person's statement that the person was not convicted, rather than was not convicted while the person was a child, of any additional offense or found to have engaged in conduct indicating a need for supervision as described by Subsection (f)(1) or (2), as applicable, rather than Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged.

(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:

(A) convicted of any other offense described by Section 43.261, Penal Code; or

(B) found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7), Family 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.

SECTION 13. 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, if a justice or municipal court finds 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).

(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 14. Amends Chapter 54, Family Code, by adding Section 54.0404, as follows:

Sec. 54.0404. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR: EDUCATIONAL PROGRAMS. (a) Authorizes the juvenile court, if a child is found to have engaged conduct indicating a need for supervision described by Section 51.03(b)(7), Family 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 15. Amends Section 58.003, Family Code, by adding Subsections (c-3) and (c-4) and amending Subsection (d), as follows:

(c-3) Authorizes a juvenile court, notwithstanding Subsections (a) (relating to child delinquent conduct) and (c) (relating to conduct sanction levels) and subject to Subsection (b) (relating to delinquent conduct in adjudication hearing), to order the sealing of records concerning a child found to have engaged in conduct indicating a need for supervision described by Section 51.03(b)(7) or taken into custody to determine whether the child engaged in conduct indicating a need for supervision described by Section 51.03(b)(7) if the child successfully completes an educational program described by Section 54.0404. Authorizes the court to:

(1) order the sealing of the records immediately and without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-4) Authorizes a prosecuting attorney or juvenile probation department to maintain until a child's 17th birthday a separate record of the child's name and date of birth and the date on which the child successfully completed the educational program, if the child's records are sealed under Subsection (c-3). Requires the prosecuting attorney or juvenile

probation department, as applicable, to send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

(d) Authorizes the court to grant the relief authorized in Subsection (a), (c-1), or (c-3) at any time after final discharge of the person or after the last official action in the case if there was no adjudication, subject, if applicable, to Subsection (e) (relating to extension of probation period). Requires the court, if the child is referred to the juvenile court for conduct constituting any offense and at the adjudication hearing the child is found to be not guilty of each offense alleged, to immediately and without any additional hearing order the sealing of all files and records relating to the case.

SECTION 16. 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 17. (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 18. Effective date: September 1, 2011.