

BILL ANALYSIS

Senate Research Center

S.B. 1317
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Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There have been several reports in Texas of individuals who have had invasive and improper photographs taken of them without consent. Those who have attempted to pursue a legal remedy have found that there is none.

In 2014, the Texas Court of Appeals found that the statute governing improper photography was written too broadly because it contains language pertaining to invasive photographs taken "with the intent to arouse or gratify sexual desire." The court found that the Texas Legislature cannot legislate a person's mind.

S.B. 1317 aims to address the court's finding with a change in the language of the statute pertaining to images taken "with the intent to arouse or gratify the sexual desire of any person." S.B. 1317 tailors the language of Section 21.15, Penal Code, to criminalize the act of intentionally visually recording or using an electronic device to view any portion of a person's body if the person is in a public place, has a reasonable expectation that the portion of the body being visually recorded or viewed, whether clothed or unclothed, is not subject to public view, and has not consented to the visual recording or viewing.

The aim of this legislation is to provide a legal remedy for those whose privacy has been violated.

S.B. 1317 amends current law relating to the prosecution of the offense of invasive visual recording.

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 the heading to Section 21.15, Penal Code, to read as follows:

Sec. 21.15. INVASIVE VISUAL RECORDING

SECTION 2. Amends Sections 21.15(a) and (b), Penal Code, as follows:

- (a) Defines "female breast," "intimate area," "changing room," and "promote."
- (b) Provides that a person commits an offense if, without the other person's consent and with intent to invade the privacy of the other person, the person:
 - (1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view;
 - (2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room; or
 - (3) Makes no change to this subdivision.

Deletes existing text providing that a person commits an offense if the person photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is not a bathroom or private dressing room without the other person's consent and with intent to arouse or gratify the sexual desire of any person, photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is a bathroom or private dressing room without the other person's consent and with the intent to invade the privacy of the other person or arouse or gratify the sexual desire of any person.

SECTION 3. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.451, as follows:

Art. 38.451. EVIDENCE DEPICTING INVASIVE VISUAL RECORDING OF CHILD.

(a) Requires the court, during the course of a criminal hearing or proceeding concerning an offense under Section 21.15 (Improper Photography or Visual Recording), Penal Code, that was committed against a child younger than 14 years of age to not make available or allow to be made available the copying or dissemination to the public property or material that constitutes or contains a visual image, as described by Section 21.15(b) (providing that a person commits an offense if the person commits certain actions), Penal Code, of a child younger than 14 years of age and that was seized by law enforcement based on a reasonable suspicion that an offense under that subsection has been committed.

(b) Requires the court place property or material described by Subsection (a) under seal of the court on the conclusion of the hearing or proceeding.

(c) Requires the attorney representing the state to be provided access to the property or material described by Subsection (a). Requires the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial, in the manner provided by Article 39.151, to be provided access to the property or material provided by Subsection (a).

(d) Authorizes a court that places property or material described by Subsection (a) under seal to issue an order lifting the seal on a finding that the order is in the best interest of the public.

SECTION 4. Amends Chapter 39, Code of Criminal Procedure, by adding Article 39.151, as follows:

Art. 39.151. DISCOVERY OF EVIDENCE DEPICTING INVASIVE VISUAL RECORDING OF CHILD. (a) Requires the court, in the manner provided by this article, to allow discovery of property or material that constitutes or contains a visual image, as described by Section 21.15(b), Penal Code, of a child younger than 14 years of age and that was seized by law enforcement based on a reasonable suspicion that an offense under that subsection has been committed.

(b) Requires that the property or material described by Subsection (a) remain in the care, custody, or control of the court or the state as provided by Article 38.451.

(c) Requires a court to deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any property or material described by Subsection (a), provided that the state makes the property or material reasonably available to the defendant.

(d) Provides that, for purposes of Subsection (c), property or material is considered to be reasonably available to the defendant if, at a facility under the control of the state, the state provides ample opportunity for the inspection,

viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: upon passage or September 1, 2015.