

## **BILL ANALYSIS**

S.B. 1317  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

According to interested parties, there have been several reports in Texas of individuals who have had invasive and improper photographs taken of them without their consent and who have attempted to pursue a legal remedy without success because of a recent Texas Court of Criminal Appeals ruling that the statute governing the offense of improper photography or visual material is overly broad, particularly in regard to the offender's intent in taking such invasive photographs. The court found that, in such cases, with respect to the actor's intent to arouse or gratify sexual desire, the legislature cannot legislate a person's mind. S.B. 1317 aims to address the court's finding, while providing a legal remedy for those whose privacy has been violated.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1317 amends the Penal Code to rename the offense of improper photography or visual recording the offense of invasive visual recording. The bill removes from the conduct constituting the offense the conditions that the actor commits the offense with the intent to arouse or gratify the sexual desire of any person, if the image or recording is of another at a location that is not a bathroom or private dressing room, or that the actor commits the offense with the intent either to invade the other person's privacy or to arouse or gratify the sexual desire of any person, if the image or recording is of another in a bathroom or private dressing room. The bill instead makes it an offense for a person, without another person's consent and with intent to invade that other person's privacy, to photograph or by videotape or other electronic means record, broadcast, or transmit 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; to photograph or by videotape or other electronic means record, broadcast, or transmit a visual image of another in a bathroom or changing room; or to promote such a photograph, recording, broadcast, or transmission knowing the character and content of the photograph, recording, broadcast, or transmission.

S.B. 1317 amends the Code of Criminal Procedure to prohibit a court, during the course of a criminal hearing or proceeding concerning an invasive visual recording offense, from making available, or allowing to be made available, the copying or dissemination to the public of property or material that constitutes or contains an invasive visual image that was seized by law enforcement based on a reasonable suspicion that such an offense has been committed. The bill

requires a court to place such property or material under seal of the court on the conclusion of the hearing or proceeding and authorizes a court that places such property or material under seal to issue an order lifting the seal on a finding that the order is in the best interest of the public. The bill requires the attorney representing the state to be provided access to such property or material and requires the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial to be provided access to such property or material in the manner provided by the bill's provisions.

S.B. 1317 requires a court to allow discovery of property or material that constitutes or contains an invasive visual image that was seized by law enforcement based on a reasonable suspicion that an invasive visual recording offense has been committed but requires such property or material to remain in the care, custody, or control of the court or the state as provided by the bill's provisions. The bill requires a court to deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any such property or material, provided that the state makes the property or material reasonably available to the defendant and establishes that 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.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.