

- SUBJECT:** Offense for unlawful dissemination of certain visual material
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson
0 nays
- WITNESSES:** For — Randy Kildow, Texas Association of Licensed Investigators; (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Jennifer Tharp, Comal County Criminal District Attorney; Ann Hettinger, Concerned Women for America of Texas; Gary Spurger, Harris County Constable Pct. 4; Justin Wood, Harris County District Attorney’s Office; David Nettles, Houston Metro Internet Crimes Against Children Taskforce; Bill Elkin, Houston Police Retired Officers Association; Lon Craft, Texas Municipal Police Association)
- Against — Mark Bennett, Harris County Criminal Lawyers Association; Kristin Etter, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas)
- DIGEST:** CSHB 603 would create a new criminal offense for the unlawful dissemination of certain visual material. It would be an offense if:
- a person intentionally disseminated visual material depicting another person engaging in sexual conduct or with the other person’s exposed intimate parts;
 - the person obtained the visual material under circumstances in which a reasonable person should have known or understood that the visual material was to remain private;
 - the person knew or should have known that the depicted person did not consent to the dissemination; and
 - the depicted person was identifiable from the visual material or from other information displayed in connection with the material.

“Exposed intimate parts” would be defined as intimate parts that were entirely unclothed or clothed in a manner that left any portion of the parts uncovered or visible through less than fully opaque clothing.

It would be a defense to prosecution that:

- the dissemination was made in the course of the lawful and common practices of law enforcement or medical treatment, reporting unlawful activity, or a legal proceeding, if permitted by law;
- the dissemination consisted of visual material depicting only a voluntary exposure of intimate parts or sexual conduct in a public or commercial setting; or
- the actor was an interactive computer service under federal law or a provider of information services under federal law and the dissemination consists of visual material provided by another.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 603 would address the problem of the electronic distribution of sexually explicit images of someone without the subject’s permission. The images, sometimes taken without consent, may be posted on websites or emailed to employers, schools, family members, and others. Sometimes contact or identifying information is included.

Current laws provide inadequate deterrence and punishment for these actions. Explicit images can be uploaded to websites where thousands can see them and they can be shared with other sites. Victims can suffer threats, harassment, stalking, and sexual exploitation that intrude into their work, school, or personal lives. Harm is difficult to remedy because removing images from the Internet rarely prevents continued distribution.

Civil lawsuits may provide inadequate compensation. Websites and defendants may have limited resources, making damage recovery difficult. Victims may lack resources to pursue lawsuits or be unwilling to attract further attention. Website operators can deny knowing who posted the

content, while those who post or distribute it may deny responsibility for its viral spread. Copyright law also may provide ineffective redress.

The bill would address this problem with a new offense that was carefully crafted to not be under-inclusive or over-inclusive and to meet all legal and constitutional standards. The bill would include provisions requiring that individuals be identifiable and that the person knows or should have known that the depicted person did not consent to the dissemination of the images. The bill contains several thresholds an action would have to meet to fall under the offense so that common actions would not be included.

The bill would establish certain defenses to prosecution to ensure it captured only criminal activity and not legitimate law enforcement, medical, legal, or commercial actions. It also would be a defense to prosecution if the material depicted only voluntary exposure in a public or commercial setting. A state jail felony is the proper penalty for this crime as it would give law enforcement proper leverage to pursue it, and the category is designed for non-violent but serious actions.

OPPONENTS
SAY:

CSHB 603 would be a content-based restriction on speech, which would be presumptively unconstitutional. The bill would be overly broad and could lead to unfair convictions. Some of the definitions in the bill are so broad that common situations could be captured under the crime. For example, the definition of “exposed intimate parts” means clothed in a manner that leaves any portion of someone’s intimate parts uncovered or visible through less than fully opaque clothing, and this could describe commonly seen street attire that might appear in visual images.

The state should be cautious about creating new crimes for nonviolent behaviors. Making such actions a state jail felony is too punitive given the nonviolent nature of these actions. In some cases, current statutes, including those for harassment and impersonating another already criminalize some activities that occur in these situations. While distributing these images may be reprehensible, these cases generally could be handled outside the criminal justice system, where victims could seek damages through civil courts.