

Chapter 955

S.B. No. 1317

AN ACT

1
2 relating to the prosecution of the offense of invasive visual
3 recording.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Section 21.15, Penal Code, is
6 amended to read as follows:

7 Sec. 21.15. INVASIVE [~~IMPROPER PHOTOGRAPHY OR~~] VISUAL
8 RECORDING.

9 SECTION 2. Sections 21.15(a) and (b), Penal Code, are
10 amended to read as follows:

11 (a) In this section:

12 (1) "Female breast" means any portion of the female
13 breast below the top of the areola.

14 (2) "Intimate area" means the naked or clothed
15 genitals, pubic area, anus, buttocks, or female breast of a person.

16 (3) "Changing room" means a room or portioned area
17 provided for or primarily used for the changing of clothing and
18 includes dressing rooms, locker rooms, and swimwear changing areas.

19 (4) "Promote" [,"promote"] has the meaning assigned by
20 Section 43.21.

21 (b) A person commits an offense if, without the other
22 person's consent and with intent to invade the privacy of the other
23 person, the person:

24 (1) photographs or by videotape or other electronic

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1 means records, broadcasts, or transmits a visual image of an
2 intimate area of another person if the other person has a reasonable
3 expectation that the intimate area is not subject to public view;
4 ~~[another at a location that is not a bathroom or private dressing~~
5 ~~room.]~~

6 ~~[(A) without the other person's consent, and~~
7 ~~[(B) with intent to arouse or gratify the sexual~~
8 ~~desire of any person,]~~

9 (2) photographs or by videotape or other electronic
10 means records, broadcasts, or transmits a visual image of another
11 in a bathroom or changing room ~~[another at a location that is a~~
12 ~~bathroom or private dressing room.]~~

13 ~~[(A) without the other person's consent, and~~
14 ~~[(B) with intent to:~~

15 ~~[(i) invade the privacy of the other~~
16 ~~person; or~~

17 ~~[(ii) arouse or gratify the sexual desire~~
18 ~~of any person]; or~~

19 (3) knowing the character and content of the
20 photograph, recording, broadcast, or transmission, promotes a
21 photograph, recording, broadcast, or transmission described by
22 Subdivision (1) or (2).

23 SECTION 3. Chapter 38, Code of Criminal Procedure, is
24 amended by adding Article 38.451 to read as follows:

25 Art. 38.451. EVIDENCE DEPICTING INVASIVE VISUAL RECORDING
26 OF CHILD. (a) During the course of a criminal hearing or
27 proceeding concerning an offense under Section 21.15, Penal Code,

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1 that was committed against a child younger than 14 years of age, the
2 court shall not make available or allow to be made available the
3 copying or dissemination to the public property or material that
4 constitutes or contains a visual image, as described by Section
5 21.15(b), Penal Code, of a child younger than 14 years of age and
6 that was seized by law enforcement based on a reasonable suspicion
7 that an offense under that subsection has been committed.

8 (b) The court shall place property or material described by
9 Subsection (a) under seal of the court on the conclusion of the
10 hearing or proceeding.

11 (c) The attorney representing the state shall be provided
12 access to the property or material described by Subsection (a). In
13 the manner provided by Article 39.151, the defendant, the
14 defendant's attorney, and any individual the defendant seeks to
15 qualify to provide expert testimony at trial shall be provided
16 access to the property or material provided by Subsection (a).

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

20 SECTION 4. Chapter 39, Code of Criminal Procedure, is
21 amended by adding Article 39.151 to read as follows:

22 Art. 39.151. DISCOVERY OF EVIDENCE DEPICTING INVASIVE
23 VISUAL RECORDING OF CHILD. (a) In the manner provided by this
24 article, a court shall allow discovery of property or material that
25 constitutes or contains a visual image, as described by Section
26 21.15(b), Penal Code, of a child younger than 14 years of age and
27 that was seized by law enforcement based on a reasonable suspicion

1 that an offense under that subsection has been committed.

2 (b) Property or material described by Subsection (a) must
3 remain in the care, custody, or control of the court or the state as
4 provided by Article 38.451.

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

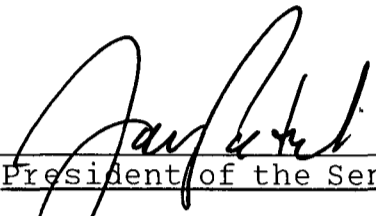
9 (d) For purposes of Subsection (c), property or material is
10 considered to be reasonably available to the defendant if, at a
11 facility under the control of the state, the state provides ample
12 opportunity for the inspection, viewing, and examination of the
13 property or material by the defendant, the defendant's attorney,
14 and any individual the defendant seeks to qualify to provide expert
15 testimony at trial.

16 SECTION 5. The change in law made by this Act applies only
17 to an offense committed on or after the effective date of this Act.
18 An offense committed before the effective date of this Act is
19 governed by the law in effect on the date the offense was committed,
20 and the former law is continued in effect for that purpose. For
21 purposes of this section, an offense was committed before the
22 effective date of this Act if any element of the offense occurred
23 before that date.

24 SECTION 6. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2015. _____



President of the Senate



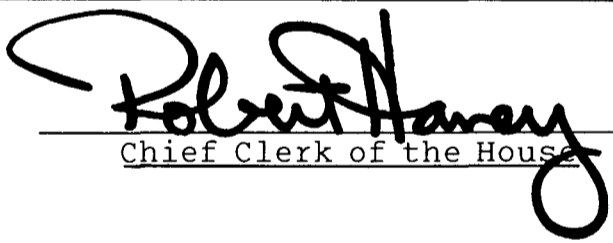
Speaker of the House

I hereby certify that S.B. No. 1317 passed the Senate on May 7, 2015, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 30, 2015, by the following vote: Yeas 31, Nays 0. _____



Secretary of the Senate

I hereby certify that S.B. No. 1317 passed the House, with amendment, on May 27, 2015, by the following vote: Yeas 144, Nays 0, two present not voting. _____



Chief Clerk of the House

Approved:

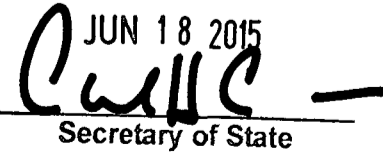
6-16-2015

Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:00 pm O'CLOCK

JUN 18 2015


Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 28, 2015

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1317 by Menéndez (Relating to the prosecution of the offense of invasive visual recording.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to remove certain improper photography or visual recording intent criteria and rename the offense invasive visual recording. The current offense, improper photography or visual recording, is punishable as a state jail felony. The Office of Court Administration anticipates no significant fiscal impact to the state court system as a result of implementing the provisions of the bill. This analysis assumes the provisions of the bill would not result in a significant impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, ESi, KJo, LM, TB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 14, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1317 by Menéndez (Relating to the prosecution of the offense of invasive visual recording.), **As Engrossed**

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Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 27, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1317 by Menéndez (Relating to the prosecution of the offense of improper photography or visual recording.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to remove certain improper photography or visual recording intent criteria. The offense of improper photography or visual recording is currently punishable as a state jail felony. The Office of Court Administration anticipates no significant fiscal impact to the state court system as a result of implementing the provisions of the bill. This analysis assumes the provisions of the bill would not result in a significant impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

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CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

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TO: Honorable Dan Patrick, Lieutenant Governor, Senate

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IN RE: SB1317 by Menéndez (Relating to the prosecution of the offense of invasive visual recording.), **As Passed 2nd House**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Penal Code to remove certain improper photography or visual recording intent criteria and rename the offense invasive visual recording. The current offense, improper photography or visual recording, is punishable as a state jail felony.

A state jail felony is punishable by confinement in a state jail for 180 days to two years and an optional fine not to exceed \$10,000.

Reducing the types of behaviors subject to criminal penalties is expected to result in decreased demand on the correctional resources of the state due to fewer persons potentially placed under felony community supervision or admitted into state correctional facilities. In fiscal year 2014, 123 people were arrested, 19 were placed under felony community supervision, and 14 were admitted into state correctional institutions for the offense of improper photography or visual recording. However, this analysis assumes the bill's provisions would not result in a significant impact on state correctional populations, programs, or workloads.

Source Agencies:

LBB Staff: UP, LM, ESi

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

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