

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass
Vote: 8 - 2 - 0
Yeas: Cameron, Krieger, Olson, Shields, Smith J., Stiegler, Whisnant, Barker
Nays: Barton, Garrett
Exc.: 0
Prepared By: Shannon Sivell, Counsel
Meeting Dates: 2/12, 3/11

WHAT THE MEASURE DOES: Requires that sexually explicit property or material involving a victim of criminal conduct remain in the control of a law enforcement agency or the court throughout the criminal proceeding.

ISSUES DISCUSSED:

- Dissemination of graphic photos
- Effect of dissemination on victims and privacy rights
- Walsh Act
- Mandatory protective orders
- Litigating “reasonably available”
- Inconvenience to defense
- Feasibility of reviewing evidence at secure law enforcement facility
- Cost to the state

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: Currently, the state is required to provide discovery, such as photographs and video recordings to the defense in all criminal cases. District attorneys and victims have the right to petition the court for a protective order regarding sexually explicit materials; however, this order does not prevent the materials from being reproduced as part of the discovery process. During the discovery process, materials may be reproduced and given to defense attorneys, defense experts and the defendant. As a result, the victim is afforded little to no privacy. This bill would require the state to make sexually explicit materials “reasonably available” to the defendant, defense attorney and any defense expert. “Reasonably available” means they would have to be provided ample opportunity to inspect, view and examine the materials at a precinct or courthouse. They would NOT be allowed to reproduce them.

The provisions of this bill do not prevent the defense from filing a Motion to Discover and having a hearing if they are not being provided ample opportunity to view the evidence.