

SUBJECT: Outlawing computerized child pornography

COMMITTEE: Criminal Jurisprudence— favorable, without amendment

VOTE: 6 ayes — Place, Talton, Dunnam, Farrar, Hinojosa, A. Reyna
0 nays
3 absent — Galloway, Keel, Nixon

SENATE VOTE: On final passage, March 10 — voice vote

WITNESSES: None

BACKGROUND : The Penal Code provides that a person who knowingly or intentionally possesses material containing a film image visually depicting a child younger than 18 engaging in sexual conduct commits a third degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000. The definition of film image includes a photograph, slide, negative, film, videotape or reproduction of any of these media.

DIGEST: SB 674 would amend the definition of child pornography in the Penal Code to include visual images on computer disks, diskettes or another physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

The bill would take effect September 1, 1997.

SUPPORTERS SAY: SB 674 would clarify and update the state's child pornography laws to include computer images stored on a disk or in memory or transmitted over the Internet. This bill is needed to ensure that Texas law keeps pace with technological advances. It would close a loophole that could impede prosecution of child pornographers who depict, distribute, or directly download images from a computer. Images from computers do not fit the technical definition of a film image now provided in the Penal Code.

The right to privacy only includes the right to read obscene material in one's own home; this right does not encompass any privilege to possess child pornography. The government may prohibit the distribution of visual depictions of sexual conduct involving children even if the material could not otherwise be found to be obscene. Child pornography is not protected by the First Amendment and the fact that it is depicted on the Internet as opposed to in a magazine is irrelevant. This bill would simply add new media to an existing law that has withstood constitutional tests.

**OPPONENTS
SAY:**

Legislation such as this can have a chilling effect on the exercise of constitutional rights to both free speech and privacy. The bill also raises questions about the state's ability to regulate the Internet, which could infringe on federal prerogatives.

NOTES:

A related bill, HB 1300 by Corte, requiring Internet service providers to furnish screening software to parents, has passed both houses and awaits action by the governor.