

SUBJECT: Forfeiture of property used in sexual offenses against children

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Hinojosa, Green, Kitchen, Martinez Fischer, Shields
0 nays
4 absent — Dunnam, Keel, Talton, Garcia

WITNESSES: For — Kevin Brownlee, Sugar Land Police Department; Selena Munoz, Child Advocates of Fort Bend; Dayna Blazey, Travis County District Attorney's Office; *Registered but did not testify*: Chris Heaton, Texas Municipal Police Association; Chris W. Jones, Combined Law Enforcement Associations of Texas; Livia Liu, Dallas County District Attorney's Office

Against — None

On — Brian Johnson, Reid Wittliff, Office of the Attorney General

BACKGROUND: Code of Criminal Procedure, art. 59.01 allows for forfeiture of contraband property of any nature, including real, personal, tangible, or intangible used in the commission of various felony offenses.

DIGEST: CSHB 510 would amend Code of Criminal Procedure, art. 59.01(1) to include under the definition of "contraband" any real, personal, tangible, or intangible property used in the commission of the following felony offenses:

- ! criminal sexual solicitation of a minor,
- ! indecency with a child, sexual performance by a child, or
- ! possession or promotion of child pornography.

The bill would take effect on September 1, 2001 and would apply only to property that became contraband on or after that date.

**SUPPORTERS
SAY:**

CSHB 510 is necessary because often in felony sexual offense cases involving children, the perpetrator used a computer to meet and solicit children on the Internet or to download or trade child pornography. When a perpetrator is convicted of a third-degree felony, the state currently cannot seize the computer used in the commission of the crime. As soon as these sex offenders are released from custody, they often go back to using their computers to find more children to harm. CSHB 510 would allow the state to seize computers used in the commission of these sex crimes and would prevent criminals from having ready access to new victims as soon as they were released. In addition, the bill would allow seizure of any money made from the commission of these crimes, such as from the sale of child pornography.

CSHB 510 would provide an appropriate punishment for those who commit sexual crimes against children. Current law allows not only for seizure of property used in any first- or second-degree felony under the Penal Code, but also for property used in felony drug cases, money laundering, certain felonies under the Finance Code, and even misdemeanor illegal dumping as defined in the Health and Safety Code. Property used in those crimes enabled the criminal to commit them. Likewise, access to a computer enables child pornographers and molesters to have ready access to children via the Internet.

CSHB 510 would not result in property being inappropriately seized. As outlined in current law, offenders would have a due-process hearing in which the burden would be on the state to prove that the property had been used in the commission of the crime. If the state could not prove by a preponderance of the evidence that the property was subject to forfeiture, it could not be seized.

CSHB 510 would allow the state to find a positive use for forfeited computers and other property. In accordance with state law, law enforcement agencies could use the property for official purposes or it could be auctioned off, with the proceeds going to the state's general revenue fund for use in other worthy programs.

OPPONENTS
SAY:

CSHB 510 could create too harsh a punishment in some cases. Current law permits forfeiture of property used in a first- or second-degree felony. When a sex offender commits a first- or second-degree felony, it is appropriate punishment to seize property used to commit that crime. For a lesser crime, however, seizure of property could be extreme, particularly when the loss of the property would affect other people living in the offender's household. The decision to make property contraband in these cases should be left to the judiciary.

The Legislature should not continue to craft a specific set of laws for sex offenders. If the Legislature believes it is appropriate to seize property used in state jail felonies and third-degree felonies, then forfeiture should apply to property used in all crimes in this punishment range.

OTHER
OPPONENTS
SAY:

CSHB 510 is a step in the right direction, but the law could be interpreted too broadly. The bill should stipulate specifically that property eligible to be seized in these state jail- and third-degree felonies would be computers used to commit the crimes or money made as a result of the crime.

NOTES:

HB 510 as filed would have amended Code of Criminal Procedure, 59.01(1) to include under the definition of "contraband" any real, personal, tangible, or intangible property used in the commission of felony possession or promotion of child pornography or in any felony or misdemeanor under Penal Code, sec. 25.04, enticing a child.