

SUBJECT: Forfeiting contraband for child solicitation, sexual performance offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Keel, Riddle, Pena, Denny, Reyna

1 nay — Hodge

3 absent — Escobar, P. Moreno, Raymond

WITNESSES: For — None

Against — None

On — Don Clemmer, Office of the Attorney General

BACKGROUND: Chapter 59 of the Code of Criminal Procedure allows certain types of property to be considered contraband that is subject to seizure and forfeiture if used in the commission of certain specified offenses.

Chapter 43.25 of the Penal Code makes it a first- or second-degree felony, under Sexual Performance of a Child, to employ, authorize or induce a child younger than 18 years old to engage in sexual conduct or a sexual performance and to direct or promote a performance that includes sexual conduct by a child younger than 18 years old.

Under Penal Code sec. 15.031, Criminal Solicitation of a Minor, it is an offense to request, command, or attempt to induce a minor to engage in specific conduct that would constitute another specified serious, violent, or sexual offense listed in the section or would make the minor a party to the offense. Punishment for this offense is one category lower than the solicited offense.

DIGEST: HB 840 would expand the definition of contraband that can be subject to seizure and forfeiture under Chapter 59 of the Code of Criminal Procedure to include property used to facilitate, or intended to be used to facilitate, the offenses of criminal solicitation of a minor or sexual performance of a child.

HB 840 also would change a reference in the forfeiture statute that designates city attorneys as the prosecutors in certain money laundering cases to refer instead to certain types of pollution cases.

HB 840 would apply only to forfeitures of contraband used in offenses committed on or after September 1, 2005, the effective date of the bill.

**SUPPORTERS  
SAY:**

HB 840 is necessary to allow contraband, especially cars, used to commit solicitation of a minor or sexual performance of a minor to be subject to forfeiture and seizure by law enforcement. Courts have ruled, in general, that in order for cars to be considered to be used in the commission of a crime, and therefore subject to the Chapter 59 forfeiture laws, the crime must occur while the offender uses the car. Cases of criminal solicitation of a minor or sexual performance of a child usually do not fit this narrow requirement because the car is used to transport the child to another location where the offense takes place and so the car is not subject to forfeiture.

HB 840 would address this problem by specifically stating that property — such as cars — used to facilitate or intended to be used to facilitate these two serious offenses against minors could be seized and forfeited. This could help protect minors by deterring offenders from committing these crimes, would contribute to the punishments that these offenders receive, and would ensure that offenders lose at least some of the means to reoffend. The bill also could help ensure that family members realize that they may suffer consequences from an offender's crime. The seriousness of these crimes, the potential harm to children, and the integral role that cars play in these crimes warrant the exception to case law that would be created by HB 840 and outweigh concerns about potential harm to innocent victims.

The change that HB 840 would make in the forfeiture statute under which city attorneys are the designated prosecutors would fix an error that occurred when the reference inadvertently was changed to refer to cases of money laundering. It simply would return the statute to its original reference to certain pollution cases.

**OPPONENTS  
SAY:**

HB 840 could result in innocent family members of an offender being punished. For example, the spouse of someone whose car was seized and forfeited could have difficulty getting to work, taking children to school,

or buying family necessities. It also could affect the potential rehabilitation of offenders if they do not have a car to drive to school or work.

The deterrent value of potentially having a car seized for committing solicitation of a child or sexual performance of a child is questionable. These are serious offenses that can carry prison terms and it is unlikely that a relatively minor punishment like having a car seized would deter someone who commits these crimes any more than would the potential prison term.