

SUBJECT: Administrative subpoenas to combat child pornography and sexual abuse

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Gallego, Hartnett, Burkett, Carter, Zedler

0 nays

4 absent — Aliseda, Christian, Y. Davis, Rodriguez

SENATE VOTE: On final passage, May 12 — 31-0

WITNESSES: (*On House companion bill, HB 3746:*)

For — Matthew Gray, Houston Metro Internet Crimes Against Children Task Force; David Keith, Grier Weeks, National Association to Protect Children (*Registered, but did not testify*: Donald Baker, Austin Police Department; Lon Craft, Texas Municipal Police Association; Deborah Ingersull, Texas State Troopers Association; Diana Martinez, TexProtects, the Texas Association for the Protection of Children)

Against — None

On — Jeff Eckert, Texas Office of the Attorney General

DIGEST: SB 1843 would create a new chapter of the Government Code, ch. 422, on Internet-based sexual exploitation of a minor. The act would be called Alicia's Law. The bill would give administrative subpoena power to a prosecuting attorney or Internet Crimes Against Children Task Force (ICAC) officer under certain circumstances and would set up an Internet crimes against children account. For this new chapter, an ICAC task force would be required to be located in Texas and recognized by the United States Department of Justice.

Authority for administrative subpoena. A prosecutor or an ICAC officer could issue and serve an administrative subpoena if it related to an investigation of an offense involving sexual exploitation of a minor and there was reasonable cause to believe that an Internet or electronic service account provided through an electronic communication service or remote

computing service had been used in the sexual exploitation or attempted sexual exploitation of the minor. The attorney general would assist prosecuting attorneys and ICAC officers in obtaining administrative subpoenas to investigate and prosecute offenses that involved the Internet-based sexual exploitation of a minor.

Documents allowed to be required for production by administrative subpoena. The subpoena could require the production of any records or documents relevant to the investigation, including:

- a name;
- an address;
- a local or long distance telephone connection record, satellite-based Internet service provider connection record, or record of session time and duration;
- the duration of the applicable service, including the start date for the service and the type of service used;
- a telephone or instrument number or other number used to identify a subscriber, including a temporarily assigned network address; and
- the source of payment for the service, including a credit card or bank account number.

Documents protected from administrative subpoena disclosure. The provider of an electronic communication service or remote computing service would be required to disclose the following information by court order, but would not be allowed to disclose the following information in response to the administrative subpoena:

- an in-transit electronic communication;
- an account membership related to an Internet group, newsgroup, mailing list, or specific area of interest;
- an account password; or
- any account content, including any form of email, an address book, contact list, or buddy list, a financial record, Internet proxy content or Internet history, or a file or other digital document stored in the account or as part of the use of the account.

Required contents of administrative subpoena. The subpoena would be required to describe any objects or items requested and give a reasonable date for the items to be gathered and produced.

Petition to quash administrative subpoena. Before the date the information was required for production, the person who received the subpoena could petition to a court in the county where the subpoena was issued for an order to modify or quash the subpoena or to prohibit disclosure of certain information.

Documents obtained through administrative subpoena if criminal case not brought. If a criminal case did not result from production of the documents within a reasonable period, the prosecutor or ICAC task force would be required to destroy the documents or return them to the person who produced them.

Confidentiality of materials produced through administrative subpoena. Any information, records, or data reported or obtained under the administrative subpoena would be confidential and could not be disclosed to any other person unless the disclosure was made as part of a criminal case related to those materials.

Service of administrative subpoena. A person authorized to serve process under the Texas Rules of Civil Procedure would be allowed to serve an administrative subpoena.

Internet crimes against children account. The Internet crimes against children account would be created in the General Revenue Fund. Money in the account could be appropriated only to support the administration and activities of an ICAC task force. Any money appropriated would be appropriated in equal amounts to each ICAC task force.

The account would consist of money transferred by the Legislature to the account, in addition to gifts, grants, and donations. Interest earned on the account would be credited to the account. The fund would be exempt from the state's fund consolidation process.

Effective Date. This bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 1843 would provide the support successful ICAC teams need to catch dangerous predators and rescue more children from sexual exploitation and abuse. Federal legislation enacted in 1998 created the National Crimes Against Children Task Force Program that now is a network of 61 coordinated task forces across the nation. Texas has three federally funded ICACs, which receive small grants from the U.S. Department of Justice.

The Texas ICACs are in Dallas and Houston and in the Attorney General's Office. They currently have 10 officers, but that is not enough to handle the magnitude of the problem and does not reflect the urgency with which the exploited children deserve to be rescued. With limited resources, ICAC has been very successful, rescuing one child for every three arrests.

For those cases that ICAC officers are able to investigate now, the primary concern is rescuing children from further exploitation and before they are sexually abused. SB 1843 would allow prosecuting attorneys and ICAC officers to compel production of subscriber data from an Internet service provider on a computer IP address that was trafficking in pornographic images of children. When a suspect has been identified and an investigation starts, going through the normal grand jury subpoena process can take weeks if the investigating officer cannot find a prosecutor to sign off on the subpoena or a grand jury is not meeting for weeks, as can be the case in rural counties.

With reasonable cause, the administrative subpoena would allow the ICAC officer to get to a vulnerable child in a matter of hours. Administrative subpoenas would be allowed only in this very narrow circumstance when children were being exploited and only for ICAC officers and prosecutors on these cases, not for any crime. Federal officers that investigate these cases have administrative subpoena power, and some other states allow administrative subpoenas in these types of cases as well.

This bill is named Alicia's law for Alicia Kozakeiwicz, who was abducted at 13 by a predator she met on the Internet. He held her and tortured her in a basement for four days. Unfortunately, children like Alicia are out there now and need our help. The U.S. Department of Justice reports that crimes related to child pornography are the fastest-growing class of crimes in this country. More than 30,000 individual computers in Texas were identified as trafficking in sadistic images of children being raped and tortured.

These images are not just naked children and are not images of high school girls gone wild on spring break; these images are of sexual penetration of young children. Eighty three percent of the images are of 6- to 12-year-olds. The most popular recent video for these types of child pornographers involves an 18-month-old girl being sexually abused. Eighty percent of these child porn predators want to see a child being penetrated in the image, and 21 percent want to see the child being tortured. The link between this kind of child pornography and hands on

sexual abuse has been documented. The Butner federal prison study found that of 64 felons serving time for child pornography, 80 percent of them molested an average of 19 children each. Law enforcement has identified three factors related to child pornography on a person's computer that if present indicate a 90 percent chance the person will sexually abuse a child in the future.

The problem is staggering, but with the proper resources, we have the tools to catch these dangerous predators. Law enforcement has software that can track those indicators to identify the truly dangerous child exploitation pornographers. The problem is that law enforcement can only investigate 1 percent of suspects identified. Setting up the Internet crimes against children account under SB 1843, although not yet funded, would bring needed attention to this issue and would serve as a catalyst for rallying support for more funding. SB 1843 would set up the account so that one day, hopefully soon, it would provide the ICAC officers the funding needed to investigate many more identified suspects and save many more children from exploitation and abuse.

**OPPONENTS
SAY:**

SB 1843 could allow rogue officers to abuse administrative subpoena power. Although the intent is to allow an officer to get information only from an Internet service provider, a vigilante officer could create a subpoena compelling a suspect to provide the information. The possibilities for harassment and violation of constitutional search and seizure protections by a rogue officer would just be too great. Texas does not allow administrative subpoenas for anything right now, and this bill would be a huge step that should not be taken without adequate protections in place, which SB 1843 would not provide.

Moreover, the problem the bill would attempt to fix does not exist. The grand jury subpoena process does not take a long time. An officer merely finds out when and which grand jury will be meeting in two weeks, which is usually the time given to produce the requested documents, and asks the prosecutor to sign off on it. This process is working just fine, and having the prosecutor sign off on the subpoena is an important safeguard of our civil liberties.

The basis for this bill is faulty to begin with. Just because someone looks at a nude picture of a child does not mean that person is going to sexually abuse children. SB 1843 could violate the rights of many law-abiding citizens. Drawing sweeping conclusions from the Butner study about the

connection between child pornography and subsequent sexual abuse is unfair because the only people polled were convicted criminals in treatment, not the thousands of people who might view child pornography without ever producing or trafficking the material.

NOTES:

The House companion bill, HB 3746 by Frullo, passed the House by 138-0 on May 13 and was reported favorably, without amendment, by the Senate Criminal Justice Committee on May 21 and has been placed on the May 25 Local and Uncontested Calendar.