

BILL ANALYSIS

Senate Research Center
80R11017 KCR-D

C.S.S.B. 6
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Children are especially vulnerable to victimization. With so many children using the Internet on a daily basis, predators can easily find and exploit them. For predators, the Internet is a new, effective, and more anonymous way to seek out and groom children for criminal purposes. According to the Crimes Against Children Research Center, one in seven youths received a sexual solicitation over the Internet during the last year.

Currently, judges are authorized to provide concurrent sentences for intoxication, assault, and intoxication manslaughter, as well as certain sexual offenses. However, concurrent sentences cannot be given to a person convicted of on-line solicitation of a minor. A person who commits sexually explicit on-line communication with a minor who is 14 to 16 years old is punishable by a state jail felony, which is a sentence of six months to two years in the State Jail Division. Current law also provides that a person who commits on-line sexual solicitation of a minor who is 14 to 16 years old is punishable by a third degree felony, which is a sentence of two to 10.

C.S.S.B. 6 increases the penalty for sexually explicit on-line communication with a minor who is 14 to 16 years old from a state jail felony to a third degree felony, increases the penalty for on-line sexual solicitation of a minor who is 14 to 16 years old from a third degree felony to a second degree felony, and provides that sentences for certain offenses arising out of the same criminal offense may run concurrently or consecutively. This bill also directs the Crime Stoppers Advisory Council to emphasize programs targeted at detecting unregistered sex offenders. C.S.S.B. 6 also requires that the attorney general establish an Internet service provider database and establishes requirements relating to the preservation of certain records and information and penalties for violation of said requirements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 1, Code of Criminal Procedure, by adding Chapter 24A, as follows:

CHAPTER 24A. RESPONDING TO SUBPOENAS AND CERTAIN OTHER COURT ORDERS ; PRESERVING CERTAIN INFORMATION

SUBCHAPTER A. RESPONDING TO SUBPOENAS AND CERTAIN OTHER COURT ORDERS

Art. 24A.001. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to a subpoena, search warrant, or other court order that relates to the investigation or prosecution of a criminal offense under Section 33.021 (Online Solicitation of a Minor), Penal Code, and is served on or issued with respect to an Internet service provider that provides service in Texas.

Art. 24A.002. **RESPONSE REQUIRED; DEADLINE FOR RESPONSE.** (a) Sets forth certain responses required of an Internet service provider not later than the 10th day after the date on which the Internet service provider is served with or otherwise receives a

subpoena, search warrant, or other court order described by Article 24A.001, except as provided by Subsection (b).

(b) Provides that, as soon as practicable, and in no event later than the second business day after the date the Internet service provider is served with or otherwise receives a subpoena, search warrant, or other court order described by Article 24A.001, the Internet service provider is required to fully comply with the subpoena, search warrant, or order if it is indicated that full compliance is necessary to address a situation that threatens a person with death or other serious bodily injury.

(c) Provides that, for the purposes of Subsection (a)(1), full compliance with the subpoena, warrant, or order includes, to the extent permitted under federal law, producing or providing all documents or information requested under the subpoena, warrant, or order, or providing electronic access to all documents or information requested.

Art. 24A.003. **DISOBEYING SUBPOENA, WARRANT, OR ORDER.** Authorizes the punishment in any manner provided by the law of an Internet service provider that disobeys a subpoena, search warrant, or other court order described by Article 24A.001 and that was not excused under Article 24A.002(a)(2).

[Reserves Articles 24A.004-24A.050 for expansion.]

SUBCHAPTER B. PRESERVING CERTAIN INFORMATION

Art. 24A.051. **PRESERVING INFORMATION.** (a) Requires an Internet service provider providing service in Texas to take all steps necessary to preserve all records or other potential evidence in a criminal trial that is in the possession of the Internet service provider on written request of a state or federal law enforcement agency and pending the issuance of a subpoena or other court order described by Article 24A.001.

(b) Requires an Internet service provider, subject to Subsection (c), to preserve information under Subsection (a) for a period of 90 days after the date the Internet service provider receives the written request described by Subsection (a).

(c) Requires an Internet service provider to preserve information under Subsection (a) for the 90-day period immediately following the 90-day period described by Subsection (b) if the requesting law enforcement agency in writing requests an extension of the preservation period.

SECTION 2. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.0281, as follows:

Sec. 402.0281. **INTERNET SERVICE PROVIDER DATABASE.** (a) Requires the attorney general to establish a computerized database containing contact information for all Internet service providers providing service in Texas. Sets forth the specific contact information to be included.

(b) Requires the attorney general, at the request of a district attorney, criminal district attorney, county attorney, law enforcement agency of Texas, or local law enforcement agency, to allow the requestor access to the database to expedite the information-gathering process of a criminal investigation conducted by the requestor concerning an offense under Section 33.021, Penal Code.

SECTION 3. Amends Section 414.005, Government Code, as follows:

Sec. 414.005. **DUTIES.** Requires the Crime Stoppers Advisory Council (council) to create specialized programs targeted at detecting specific crimes or types of crimes, including at least one program that encourages individuals to report unregistered sex offenders and financially rewards those individuals if their report leads or substantially

contributes to the arrest or apprehension of an unregistered sex offender. Requires the council to encourage, advise, and assist crime stoppers organizations in the implementation of any programs created under Subdivision (6).

SECTION 4. Amends Section 3.03(b), Penal Code, authorizing sentences to run concurrently or consecutively if the accused is found guilty of more than one offense arising out of the same criminal episode if each sentence is for a conviction of an offense under Section 33.021 (Online Solicitation of a Minor).

SECTION 5. Amends Section 33.021(f), Penal Code, to provide that an offense under Subsection (b) is a felony of the third degree, rather than a state jail felony, except if the minor is younger than 14 years or whom the actor believes to be younger than 14 years of age at the time of the commission of the offense, then the offense is a felony of the second degree. Provides that an offense under Subsection (c) is a felony of the second, rather than third, degree.

SECTION 6. Requires the attorney general to ensure that the database required under Section 402.0281, Government Code, as added by this Act, is fully operational not later than April 1, 2008. Requires the attorney general to begin to allow requesting parties access to that database not later than June 1, 2008.

SECTION 7. Makes the application of Sections 3.03(b) and 33.021(f), Penal Code, as amended by this Act, prospective to September 1, 2007.

SECTION 8. Effective date: September 1, 2007.