

- SUBJECT:** Solicitation of children and promotion of child pornography
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Hinojosa, Dunnam, Garcia, Green, Keel, Smith, Talton, Wise  
0 nays  
1 absent — Nixon
- SENATE VOTE:** On final passage, March 29 — voice vote
- WITNESSES:** No public hearing
- BACKGROUND:** Penal Code, sec. 15.031 makes it an offense if, with intent to commit one of the violent offenses listed in Code of Criminal Procedure, art. 42.12, sec. 3g(a)(1), a person requests, commands, or attempts to induce a minor to engage in conduct that would constitute one of the “3g” offenses or to make the minor a party to the offense. The offense is one category lower than the solicited offense.
- Penal Code, sec. 43.26 makes possession or promotion of child pornography a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000.
- Under Penal Code, sec. 43.25, a person commits the offense of sexual performance of a child if the person employs, authorizes, or induces a child younger than 18 to engage in sexual conduct or sexual performance. Sexual conduct is defined as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.
- DIGEST:** SB 33 would make it a crime under the offense of criminal solicitation of a minor to, with intent to commit specified sex crimes, request, command, or attempt to induce a minor or another whom the person believes is a minor to engage in conduct that would constitute one of the specified sex crimes or that would make the minor or the person believed to be a minor a party to one of the offenses. The offense would have to be done with intent to commit

indecent with a child, sexual assault, aggravated sexual assault, or sexual performance by a child. The offense would be one category lower than the solicited offense.

SB 33 would increase from a third-degree felony to a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000, the penalty for knowingly or intentionally promoting or possessing with intent to promote material that visually depicts a child younger than 18 years old engaging in sexual conduct.

The bill would expand the definition of sexual conduct in the offense of sexual performance of a child to include lewd exhibition of the anus or of any portion of the female breast below the top of the areola.

SUPPORTERS  
SAY:

It is necessary to expand the offense of solicitation of a minor to include instances in which the offender *believed* the person was a minor to cover the growing incidence of adults soliciting children over the Internet. Situations have occurred in which persons have used the Internet to try to lure someone they thought was a child, but who really was a law enforcement officer, into committing a sexual act. Since the victim was not actually a child, no criminal offense occurred. SB 33 would close that loophole by allowing persons to be prosecuted for criminal solicitation of a minor if they believed they were soliciting a child.

SB 33 is drawn narrowly to apply only to solicitation of sex offenses, since those are the situations in which children need the most protection. The bill appropriately would tie the offense to the mental state of the offender.

SB 33 would raise the punishment for promoting pornography so that it could be punished one degree more harshly than possession of pornography. The punishment should be harsher because the promotion of pornography is a more serious crime than possession alone. The Legislature has made many changes to the 1993 Penal Code revisions when warranted by circumstances. With the increased use of the Internet to promote pornography, this offense has become more widespread and deserves a harsher punishment.

OPPONENTS  
SAY:

The 1993 Penal Code was crafted carefully to encompass broad categories of offenses and to balance offenses and penalties carefully. Its provisions should not be altered for special situations.