

**SUBJECT:** Enhancing penalties for use and promotion of Internet child pornography

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 9 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, J. Moreno, Pena,  
Talton

0 nays

**WITNESSES:** For — None

Against — Ann del Llano, American Civil Liberties Union of Texas; Jana McCown, Williamson County District Attorney's Office

**BACKGROUND:** Penal Code, sec. 43.26 makes it a third-degree felony (punishable by two to 10 years in prison and an optional fine of up to \$10,000) knowingly or intentionally to possess visual material that depicts a child under age 18 who is engaging in sexual conduct. Visual material includes film, photographs, negatives, and slides as well as disks that allow images to be displayed on a computer or any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

It is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) to promote or possess with intent to promote child pornography. A person who possesses visual material that contains six or more identical visual materials containing pornographic depictions of a child is presumed to intend to promote the material.

**DIGEST:** CSHB 60 would make it a second-degree felony knowingly or intentionally to possess child pornography transmitted to a computer by telephone line, cable, satellite transmission, or other method. It would establish a first-degree felony (punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) for promoting child pornography by telephone line, cable, satellite transmission, or other method.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 60 would give prosecutors a stronger tool to fight the increasing use of the Internet to distribute and promote child pornography. The easy access and presumed anonymity of the Internet has emboldened people who otherwise might not have tried to obtain pornographic images of children. It has created a new market for child pornography, making it easier for people to trade and sell pictures via computers and electronically.

This rapid growth in Internet activity threatens to fuel a surge of new abuses against children. A well-documented connection exists between those who possess child pornography and obscenity and those who commit sexual offenses. It is essential to treat downloading or promoting child pornography as a serious crime and to bring offenders to justice to prevent them from preying on children later.

Child pornography is an increasing problem in Texas communities. Odessa's chief of police was arrested for viewing and possessing child pornography, and a Dallas business operating under the name Landslide Productions was discovered to be the largest commercial child pornography enterprise.

Current law does not impose sufficient penalties for this crime. By setting stronger penalties, CSHB 60 would help discourage people from engaging in behavior that could lead to worse crimes.

**OPPONENTS  
SAY:**

CSHB 60 would establish the same or harsher penalties for people who download or promote child pornography over the Internet as the penalties for people who commit crimes of indecency with a child. This would be excessively harsh as well as unnecessary. Sufficient punishments exist in state and federal law to give prosecutors the tools they need to punish those who possess or promote child pornography.

By imposing mandatory enhancements for nonviolent crimes, this bill would be a step in the wrong direction. Texas prisons are filled to capacity, and the Criminal Justice Policy Council has projected a shortage of prison beds during the coming biennium. It would be a misuse of taxpayer dollars to pay the high costs of incarcerating additional nonviolent offenders for longer sentences.

Not all people who possess pornography are sexual offenders or pedophiles. This bill would punish too harshly the downloading and promoting of obscene

materials. No evidence shows that obscenity is a precursor to more serious sexual offenses, and no evidence shows that sexual crimes against children have increased recently to justify the harsher penalties under this bill.

**NOTES:**

The author plans to introduce a floor amendment specifying that the enhanced penalties would apply to an image possessed or promoted by an actor who had participated directly in producing the image.

The committee substitute changed the filed version of HB 60 to conform to the Legislative Council format.

Two related bills, HB 235 and HB 236 by West, et al., passed the House on May 1. HB 235 would increase penalties for displaying obscene material to a child, and HB 236 would enhance punishments for obscenity involving images of minors.