

- SUBJECT:** Destruction, forfeiture of items relating child pornography offenses
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Keel, Riddle, Pena, Denny, Hodge, Reyna
0 nays
3 absent — Escobar, P. Moreno, Raymond
- WITNESSES:** For — None
Against — None
On — Don Clemmer, Office of the Attorney General
- BACKGROUND:** Code of Criminal Procedure (CCP) art. 18.18 requires courts to order certain machines, devices, equipment, and paraphernalia used to commit specified gambling, sexual, and other offenses to be destroyed or forfeited upon conviction for certain offenses. These offenses include those involving obscene devices or material.
- CCP chap. 59 establishes another system that allows certain property to be seized and forfeited if used in committing certain first- and second-degree felonies in the Penal Code and other specified crimes. It establishes procedures for this process, including forfeiture hearings, which generally must follow the procedures used in civil lawsuits and outlines how the property is to be disposed.
- DIGEST:** HB 839 would add child pornography to the list of things that courts would have to ordered destroyed or forfeited upon conviction of certain offenses and would add offenses involving child pornography to the list of offenses that can lead to having machines, devices, equipment, and paraphernalia destroyed or forfeited.
- The bill would include digital images, as well as the media and equipment on which the images are stored, in the definition of obscene material and child pornography.

HB 839 would take effect September 1, 2005, and would apply only to the disposition of obscene material and child pornography seized after that date.

SUPPORTERS
SAY:

HB 839 is necessary to ensure that computer equipment used in committing offenses involving child pornography can be ordered destroyed or forfeited to the state in a timely, appropriate manner. Currently, in order to seize and forfeit computers used in the commission of child pornography, the general forfeiture proceedings in CCP Chapter 59 must be followed. These lengthy proceedings include notification requirements and a hearing that generally must comply with rules in civil suits and that usually do not begin until after a criminal conviction. This means that it easily could be one or two years after a computer has been seized before it can be disposed of. This is a problem with computers because over the course of a few years computers become outdated and their monetary value greatly diminishes.

HB 839 would solve this problem by including computers within a specific category of property that more quickly can be disposed of after a criminal conviction. The bill would add child pornography, including the computers and other media on which it or obscene material may be stored, to the items in CCP art. 18.18 that can be seized, forfeited and disposed of by court order after a final conviction without going through the forfeiture proceedings in CCP chap. 59.

This expedited procedure was developed for instruments of crime such as gambling devices and obscene material because they have no other legal use, are essential to the crime, or because they have little monetary value and are not worth the lengthy and sometimes costly CCP Chapter 59 forfeiture procedures. Including child pornography and devices on which it may be stored on the list would make sense because the monetary value and usefulness of a computer drop quickly over time and because computers can be an essential part of the crime. By the time CCP Chapter 59 forfeiture proceedings are over, a computer may be worth -- at best -- a couple hundred dollars. Allowing these computers to be disposed of more rapidly would let prosecutors or law enforcement refurbish them and donate them to schools or non-profit groups or to return them to an offender's family so that they are not wasted by becoming outdated.

Concerns that HB 839 would hurt innocent family members of an offender are unrealistic because it is unlikely that a person involved in child

pornography with a computer would be using a machine that others in a family also use. Also, family members could petition the court to have a machine subject to art. 18.18 forfeitures returned to them. Under current law, it might take even longer for a family to have a computer subject to CCP chap. 59 forfeiture proceedings returned.

OPPONENTS
SAY:

HB 839 could result in innocent family members of an offender being punished. For example, the spouse or child of someone whose computer was used in an offense involving child pornography could need the machine for work or school. If it were seized and forfeited in an expedited manner they may not have time to have it returned to them. Chap. 59 procedures require a hearing, making it easier for persons to know how to request that items be returned to them than under art. 18.18 proceedings that do not require a hearing.

HB 839 would go too far in furthering a policy of quickly going after property of offenders outside of the standard CCP chap.59 procedures when the property has many non-criminal uses.

NOTES:

The companion bill, SB 258 by Williams, has been referred to the Senate Criminal Justice Committee