

**SUBJECT:** Creating a penalty for the theft of a child's identity

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 7 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway, Talton  
0 nays  
2 absent — Moreno, Pierson

**WITNESSES:** For — Jim Sylvester, Travis County Sheriff's Office; (*Registered, but did not testify*: James Jones, Houston Police Department)  
  
Against — (*Registered, but did not testify*: Nicole Porter, ACLU of Texas)  
  
On — Esther Chavez, Office of the Attorney General; Alex Peña, Office of the Attorney General

**BACKGROUND:** Under Penal Code, sec. 32.51(b), a person commits identity theft if the person obtains, possesses, transfers, or uses identifying information of another person without the other person's consent and with intent to harm or defraud another. Identity theft is punished as a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

**DIGEST:** HB 649 would amend Penal Code, sec. 32.51(b) to make it an offense for a person, with intent to harm or defraud another, to obtain, possess, transfer, or use identifying information of a child under the age of 18.  
  
The bill would take effect on September 1, 2007, and would apply only to an offense committed on or after that date.

**SUPPORTERS SAY:** HB 649 would remove the defense of consent for the theft of a child's identity. This defense has become unworkable in light of the fact that parents are stealing their children's identity. Theft of a child's identity is a rapidly growing crime, which often goes undetected until the child reaches adulthood and attempts a major purchase or tries to apply for credit. In addition, the defense should not apply to children, who often are too young to consent to anything in a legally binding manner. Further, some

children are hesitant to testify against family members regardless of the circumstances. If the child or young adult refuses to testify against a family member, it can be difficult for prosecutors to prove that the information was used without consent. HB 649 appropriately would address this situation without removing the responsibility of the prosecutor to prove that the actor intended to harm or defraud another.

OPPONENTS  
SAY:

HB 649 is not necessary. The Penal Code already punishes identity theft. Additionally, if the child is too young to consent to the use of identifying information, then the requirement that the information be used without the consent of the owner already is proven. Texas should not continue to pass enhancements or curtailments of the ability of defendants to defend themselves. Doing so would lead to more offenders serving longer sentences when the prison and jail systems of the state already are operating at capacity.