

## **BILL ANALYSIS**

S.B. 6  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

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 online solicitation of a minor. A person who commits sexually explicit online 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 online 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 years.

S.B. 6 increases the penalty for sexually explicit online 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 online 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. 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**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

Senate Bill 6 amends the Code of Criminal Procedure (CCP) and provides that Subchapter A of Chapter 24A, CCP, 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.

The bill also provides that an Internet service provider (provider) must fully comply with the subpoena, warrant or order, or petition a court to excuse the provider from compliance 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, Code of Criminal Procedure, except in the following situation. The provider must fully comply with the subpoena, search warrant, or order if they indicate that full compliance is necessary to address a situation that threatens a person with death or other serious bodily injury, as soon as it is practicable, and in no event later than the second business day after the provider is served with or otherwise receives a subpoena, search warrant, or other court order described by Article 24A.001, CCP. Full compliance with the subpoena, warrant, or order includes producing or providing, to the extent permitted under federal law, all documents or information requested under the subpoena, warrant, or order, or providing, to the extent permitted under federal law,

S.B. 6 80(R)

electronic access to all documents or information requested under the subpoena, warrant, or order.

The bill also states that a provider that disobeys a subpoena, search warrant, or other court order described by Article 24A.001, CCP, and that was not excused from complying with the subpoena, warrant, or order under Article 24A.002(a)(2), CCP, may be punished in any manner provided by law. Articles 24A.004-24A.050, CCP, are reserved for expansion.

The bill adds that 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, CCP, a provider that provides service in this state is required to take all steps necessary to preserve all records or other potential evidence in a criminal trial that is in the possession of the provider. A provider must preserve this information for a period of 90 days after the date the provider receives the written request. A provider must preserve this information for another 90-day period immediately following the first 90-day period if the requesting law enforcement agency in writing requests an extension of the preservation period.

The bill amends the Government Code to provide that the attorney general is required to establish a computerized database containing contact information for all providers providing service in this state. The contact information must include the name and physical address of the person authorized to accept service of process for the provider, and the physical address of the provider's principal place of business in this state. At the request of a district attorney, criminal district attorney, county attorney, state or local law enforcement agency, the attorney general must 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.

The bill provides that the Crime Stoppers Advisory Council (council) must create specialized programs targeted at detecting specific crimes or types of crimes, including at least one program that encourages individuals to report sex offenders who have failed to register under Chapter 62, CCP, and financially rewards each individual who makes a report that leads or substantially contributes to the arrest or apprehension of a sex offender who has failed to register under Chapter 62, CCP, and encourage, advise, and assist crime stoppers organizations in implementing any programs that the council created, including a program specifically described above.

The bill also amends the Penal Code to add that if the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of an offense of online solicitation of a minor.

The bill also provides that an offense under Section 33.021(b), Penal Code, is a third degree felony, except that offense is a felony of the second degree if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense. An offense under Section 33.021(c), Penal Code, is a second degree felony.

The attorney general shall 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, and not later than June 1, 2008, shall begin allowing requesting parties access to that database as described by that section.

Subsection (b), Sections 3.03, and Subsection (f), Section 33.021, Penal Code, as amended by this Act, apply only to an offense committed on or after September 1, 2007. An offense committed before September 1, 2007, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before September 1, 2007, if any element of the offense occurred before that date.

#### **EFFECTIVE DATE**

September 1, 2007.

S.B. 6 80(R)

