

BILL ANALYSIS

Senate Research Center

H.B. 3746
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the United States Department of Justice, crimes related to child pornography are the fastest-growing class of crimes in the United States. There are more than 350,000 identified computers in the United States trafficking in hard-core images of children, including infants and toddlers, being assaulted and raped and subjected to bondage and torture. Texas has more than 30,000 identified computers trafficking in these crime-scene images. A virtual marketplace for these images has increased the demand for new victims and caused the increased sexual abuse of Texas children.

Texas currently has three Internet Crimes Against Children (ICAC) task forces, working with the Office of the Attorney General (OAG) and having approximately 10 full-time staff among them. One of every three ICAC-related arrests results in the identification and rescue of a local child victim. Given the magnitude and cross-jurisdictional nature of the Internet, it is imperative that state and local agencies cooperate and collaborate on these investigations, rescues, and prosecutions.

H.B. 3746 creates a dedicated revenue stream to enable ICACs task forces to create full-time investigative positions to foster the apprehension of more Texas predators and the rescue of more children in communities across the state.

The bill also provides an administrative subpoena power through the OAG, which is greatly needed because under current law, a grand jury subpoena is required to obtain subscriber data on a computer IP address that is trafficking in these sadistic images. This means that a local child victim may be at the mercy of the child's rapist or torturer before law enforcement can take action.

H.B. 3746 amends current law relating to investigations of certain offenses involving the Internet-based sexual exploitation of a minor and creates the Internet crimes against children account to support those activities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as Alicia's Law.

SECTION 2. Amends Subtitle B, Title 4, Government Code, by adding Chapter 422, as follows:

CHAPTER 422. INTERNET-BASED SEXUAL EXPLOITATION OF MINOR

Sec. 422.001. DEFINITION. Define, in this chapter, "ICAC task force."

Sec. 422.002. INTERNET CRIMES AGAINST CHILDREN ACCOUNT. (a) Provides that the Internet crimes against children account is an account in the general revenue fund.

(b) Provides that the account consists of money transferred by the legislature directly to the account, and gifts, grants, or donations.

(c) Requires that interest earned on the account be credited to the account.

(d) Provides that Section 403.095 (Use of Dedicated Revenue) does not apply to the account.

(e) Authorizes money in the account to be appropriated only to support the administration and activities of an Internet Crimes Against Children task force (ICAC task force).

(f) Requires that any money in the account that is appropriated in a state fiscal year under Subsection (e) be appropriated in equal amounts to each ICAC task force.

Sec. 422.003. ADMINISTRATIVE SUBPOENA. (a) Requires the attorney general to assist persons authorized under this section in obtaining administrative subpoenas to investigate and prosecute offenses that involve the Internet-based sexual exploitation of a minor.

(b) Authorizes a prosecuting attorney or an officer of an ICAC task force to issue and cause to be served an administrative subpoena that requires the production of records or other documentation as described by Subsection (d) if:

(1) the subpoena relates to an investigation of an offense that involves the sexual exploitation of a minor; and

(2) there is reasonable cause to believe that an Internet or electronic service account provided through an electronic communication service or remote computing service has been used in the sexual exploitation or attempted sexual exploitation of the minor.

(c) Requires that a subpoena under Subsection (b):

(1) describe any objects or items to be produced; and

(2) prescribe a reasonable return date by which those objects or items must be assembled and made available.

(d) Authorizes a subpoena issued under Subsection (b), except as provided by Subsection (e), to require the production of any records or other documentation relevant to the investigation, including:

(1) a name;

(2) an address;

(3) a local or long distance telephone connection record, satellite-based Internet service provider connection record, or record of session time and duration;

(4) the duration of the applicable service, including the start date for the service and the type of service used;

(5) a telephone or instrument number or other number used to identify a subscriber, including a temporarily assigned network address; and

(6) the source of payment for the service, including a credit card or bank account number.

(e) Prohibits a provider of an electronic communication service or remote computing service from disclosing the following information in response to a subpoena issued under Subsection (b):

(1) an in-transit electronic communication;

(2) an account membership related to an Internet group, newsgroup, mailing list, or specific area of interest;

(3) an account password; or

(4) any account content, including any form of electronic mail, an address book, contact list, or buddy list, a financial record, Internet proxy content or Internet history, or a file or other digital document stored in the account or as part of the use of the account.

(f) Requires a provider of an electronic communication service or remote computing service to disclose the information described by Subsection (e) if that disclosure is required by court order.

(g) Authorizes a person authorized to serve process under the Texas Rules of Civil Procedure to serve a subpoena issued under Subsection (b). Requires the person to serve the subpoena in accordance with the Texas Rules of Civil Procedure.

(h) Authorizes the person receiving the subpoena, before the return date specified on a subpoena issued under Subsection (b), to, in an appropriate court located in the county where the subpoena was issued, petition for an order to modify or quash the subpoena or to prohibit disclosure of applicable information by a court.

(i) Requires the prosecuting attorney or ICAC task force, if a criminal case or proceeding does not result from the production of records or other documentation under this section within a reasonable period, to, as appropriate, to destroy the records or documentation, or return the records or documentation to the person who produced the records or documentation.

Sec. 422.004. CONFIDENTIALITY OF INFORMATION. Provides that any information, records, or data reported or obtained under a subpoena issued under Section 422.003(b) is confidential, and may not be disclosed to any other person unless the disclosure is made as part of a criminal case related to those materials.

SECTION 3. Effective date: September 1, 2011.