

## **BILL ANALYSIS**

C.S.H.B. 3746  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to the U.S. Department of Justice, one of the fastest-growing classes of crime in the United States are crimes relating to child pornography. Hundreds of thousands of computers can be involved in the trafficking of violently pornographic images of children across the United States and reports indicate that thousands of identified computers traffic these images in Texas. The task forces working with the office of the attorney general to investigate Internet crimes against children in Texas have a high success rate with a significant proportion of task force-related arrests resulting in the identification and rescue of local child victims. Given the magnitude and cross-jurisdictional nature of the Internet, it is imperative that state and local agencies cooperate on these investigations, rescues, and prosecutions.

C.S.H.B. 3746 seeks to promote the apprehension of more child predators in Texas and facilitate the rescue of more child victims of this type of crime by creating a dedicated revenue stream to enable task forces investigating Internet crimes against children to create full-time investigative positions and by providing for administrative subpoenas for the investigation of certain offenses involving children.

### **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**

C.S.H.B. 3746 amends the Government Code to establish the Internet crimes against children account as an account in the general revenue fund consisting of money transferred by the legislature directly to the account and gifts, grants, or donations. The bill requires interest earned on the account to be credited to the account and exempts the account from provisions of law relating to the use of dedicated revenue. The bill limits the appropriation of money in the account to supporting the administration and activities of an Internet crimes against children task force that is operating under the attorney general or has its principal office located in a municipality with a population of one million or more. The bill requires any money in the account that is appropriated in a state fiscal year in that manner to be appropriated in equal amounts to each Internet crimes against children task force.

C.S.H.B. 3746 requires the attorney general to assist prosecuting attorneys in obtaining administrative subpoenas to investigate and prosecute offenses that involve the Internet-based sexual exploitation of a minor. The bill authorizes a prosecuting attorney or an officer of an Internet crimes against children task force to issue and cause to be served an administrative subpoena that requires the production of certain records or other documentation if the subpoena relates to an investigation of an offense that involves the sexual exploitation of a minor and 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. The bill requires an administrative

subpoena to describe any objects or items to be produced and prescribe a reasonable return date by which those objects or items must be assembled and made available. The bill authorizes an administrative subpoena issued under the bill's provisions to require the production of any records or other documentation relevant to the investigation, including the following: a name; an address; a local or long distance telephone connection record, satellite-based Internet service provider connection record, or record of session time and duration; the duration of the applicable service, including the start date for the service and the type of service used; a telephone or instrument number or other number used to identify a subscriber, including a temporarily assigned network address; and the source or payment for the service, including a credit card or bank account number.

C.S.H.B. 3746 prohibits a provider of an electronic communication service or remote computing service from disclosing the following information in response to an administrative subpoena issued under the bill's provisions: an in-transit electronic communication; an account membership related to an Internet group, newsgroup, mailing list, or specific area of interest; an account password; or any account content, including any form of e-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. The bill requires a provider of an electronic communication service or remote computing service to disclose such information if that disclosure is required by court order. The bill authorizes a person authorized to serve process under the Texas Rules of Civil Procedure to serve an administrative subpoena issued under the bill's provisions and requires the person to serve the subpoena in accordance with those rules.

C.S.H.B. 3746 authorizes the person receiving an administrative subpoena issued under the bill's provisions, before the return date specified on the subpoena and in an appropriate court located in the county where the person resides or does business, to petition for an order to modify or quash the subpoena or to prohibit disclosure of applicable information by a court. The bill requires the prosecuting attorney, if a criminal case or proceeding does not result from the production of records or other documentation within a reasonable period, as appropriate, to destroy the records or documentation or return the records or documentation to the person who produced the records or documentation.

C.S.H.B. 3746 makes any information, records, or data reported or obtained under an administrative subpoena issued under the bill's provisions confidential and prohibits disclosure of such information to any other person unless the disclosure is made as part of a criminal case related to those materials. The bill provides a short title, "Alicia's Law," for purposes of citing its provisions.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3746 omits provisions included in the original requiring a person to pay a \$10 court cost on conviction of an offense for which the defendant on conviction is required to register as a sex offender and requiring the clerk of the court to transmit such costs to the comptroller of public accounts for deposit in the state treasury to the credit of a special fund known as the Internet Crimes Against Children Fund. The substitute contains provisions not included in the original providing a short title for purposes of citing its provisions, establishing the Internet crimes against children account in the general revenue fund, and exempting the account from provisions of law relating to the use of dedicated revenue.

C.S.H.B. 3746 differs from the original by providing that the account consists of money transferred by the legislature directly to the account and gifts, grants, and donations, whereas the

original provides that the fund consists of all court costs collected on conviction of an offense that renders sex offender registration, money appropriated directly to the fund, and any other grants or gifts made to the fund. The substitute differs from the original by limiting the appropriation of money in the account to support the administration and activities of an Internet crimes against children task force that is operating under the attorney general or has its principal office located in a certain municipality, whereas the original limits the appropriation of money to support the administration of the activities of the three existing task forces operating under the attorney general and other various law enforcement entities. The substitute differs from the original by requiring money in the account that is appropriated in a state fiscal year to be appropriated in equal amounts to each applicable task force, whereas the original requires the money from the fund to be disbursed so that approximately one-third of the fund goes to each of the existing task forces.

C.S.H.B. 3746 differs from the original by requiring the attorney general to assist prosecuting attorneys in obtaining administrative subpoenas to investigate and prosecute offenses that involve the Internet-based sexual exploitation of a minor, whereas the original requires the attorney general to assist felony prosecutors in Texas in obtaining administrative subpoenas for the purposes of investigating and prosecuting crimes involving the exploitation of a minor. The substitute differs from the original by authorizing a prosecuting attorney or officer of a task force to issue and cause to be served an administrative subpoena for the production of certain records or other documentation, whereas the original authorizes the attorney general or district attorney to issue in writing and cause to be served a subpoena for the production of certain records or documentation and testimony. The substitute differs from the original by conditioning the subpoena authorization on the existence of 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, whereas the original conditions the authorization on the existence of reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of a minor.

C.S.H.B. 3746 differs from the original by including a satellite-based Internet service provider connection record in the records that may be subpoenaed, whereas the original does not include such a record. The substitute differs from the original by requiring the provider of an electronic communication service or remote computing service to disclose certain information if that disclosure is required by court order, whereas the original requires such disclosure pursuant to a warrant issued by a court of competent jurisdiction. The substitute differs from the original in nonsubstantive ways reflective of certain bill drafting conventions.