

**SUBJECT:** Adding sexual performance by a child to the definition of child abuse

**COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment

**VOTE:** 8 ayes — Goodman, A. Reyna, E. Reyna, King, Menendez, Morrison, Naishtat, Tillery

0 nays

1 absent — Nixon

**WITNESSES:** For — Craig Tounгат, Texas Parent Teacher Association

Against — None

On — Charles Childress, Texas Department of Protective and Regulatory Services

**BACKGROUND:** Family Code, sec. 261.001(1) defines abuse of a child for purposes of reporting and investigating such incidents. The definition lists specific acts or omissions, including sexual conduct harmful to a child’s mental, emotional, or physical welfare.

Penal Code, sec. 43.25 defines sexual performance of a child younger than 18 years as any sort of visual representation that exhibits actual or simulated sexual acts. More specifically, it defines “performance” as any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons. Employing, authorizing, or inducing a child to engage in sexual performance is a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000.

**DIGEST:** HB 360 would add “causing, permitting, encouraging, engaging in, or allowing sexual performance by a child” to the list of acts and omissions defining child abuse in Family Code, sec. 261.001(1). Sexual performance by a child would be as defined by Penal Code, sec. 43.25.

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HB 360 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS  
SAY:

Sexual performance by a child is a second degree felony as outlined in the Penal Code and should be specifically included in the Family Code definition of child abuse. Victimized children through sexual performance causes them emotional suffering, so HB 360 is necessary to remove any question that causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child would be considered child abuse. Some instances of sexual performance might be subject to interpretation when reported to and investigated by the Texas Department of Protective and Regulatory Services (DPRS) under the broader definitions listed in the Family Code and therefore might not be considered abuse without the clarification added by HB 360.

OPPONENTS  
SAY:

HB 360 is unnecessary because sexual performance already is investigated under the more general authority of Section 261.001(1)(E) of the Family Code, which defines abuse as sexual conduct harmful to a child's mental, emotional, or physical welfare. DPRS has had no problems using current law to investigate cases where there has been alleged sexual performance by a child.