

SUBJECT: Prohibiting criminals from profiting from websites or telephone services

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 6 ayes — Driver, Garza, Hupp, Y. Davis, Hegar, Keel

1 nay — Burnam

WITNESSES: For — None

Against — Patrick Timmons

BACKGROUND: Code of Criminal Procedure (CCP), art. 59 governs forfeiture of contraband. Among other items, contraband includes proceeds that a person accused or convicted of a crime or the person's representative or assignee receives from a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment reenacting the crime.

Art. 59.04-59.05 sets forth requirements for a forfeiture proceeding and allows the person from whom the property or proceeds are seized to have a hearing to determine the final disposition of the property or proceeds. Art. 59.06(k) requires the state's attorney to transfer to the attorney general all forfeited property that is income from or acquired with income from the types of contraband listed above. This money is available to satisfy a judgment for damages incurred by the victim. If the money has not been awarded within five years, it is transferred to the crime victims' compensation fund.

The 77th Legislature in 2001 enacted SB 795 by Ellis, which amended the definition of "proceeds" in CCP, art. 59.01, to include the sale of tangible property, such as personal property, letters, or artwork, whose value increases because of the notoriety gained from the conviction of an offense.

DIGEST: HB 406 would require the forfeiture of proceeds that a person accused or convicted of a crime or the person's representative or assignee receives from a telephone service or electronic media format, including an Internet website.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 406 would close a loophole in the current “murderabilia” law that prevents a criminal who may have murdered, raped, or robbed people from profiting from the pain and suffering those acts have caused. Current law prevents profiting from movies, books, magazine articles, tape recordings, phonograph records, radio presentations, or live presentations based on such crimes. Similarly, criminals should not be able to profit from 1-900 telephone numbers or pay-for-view websites. HB 406 is a common-sense measure to address the advent of new technology since the original law was enacted.

Some of Texas’ death-row inmates have profited from their websites. One website features Darlie Routier, who was convicted of capital murder and sentenced to death for killing two of her three children. Visitors to the website may donate to her defense fund or buy books, canvas bags, tee-shirts, silver broaches, and bumper stickers featuring Routier. Another website solicits funds for Cathy Henderson, on death row in Gatesville for the May 1995 death of a three-month infant in Austin.

HB 406 would forestall creation of 1-900 telephone services that would allow callers, for a fee, to hear details of horrific crimes. Families and friends of victims should be spared the pain of reliving the experience.

Expansion of the current law would not affect Texans’ First Amendment rights to free expression. This bill would not prevent news media from reporting on crimes, nor would it prohibit other people from writing books about the crimes or creating websites. It simply would prohibit people from sharing profits with the criminal.

Fraud and identity theft are an ongoing concern in cyberspace. Criminals or their associates should not be allowed to solicit money or ask for personal information through telephone services or paid websites.

**OPPONENTS
SAY:**

HB 406 would infringe on the First Amendment rights of inmates’ families, friends, and supporters. No Texas prison inmate personally maintains a telephone service or a paid-for-view website, as Texas Department of Criminal Justice policies restrict inmates’ computer use. However, inmates’ family members and supporters have set up websites featuring the inmates. Such sites typically focus on the inmate’s appeal for justice, not on pornography or exploitation of the details of the crime. Supporters of Derrick

Leon Jackson, who was sentenced to death for a double homicide in Houston, raised awareness of his case through a website. As a result, his conviction is being reviewed as part of an investigation into handling of DNA evidence by a Harris County crime lab.

HB 406 unfairly would penalize indigent death-row inmates who cannot afford effective legal representation. Websites created by friends and family help raise money for the inmates' legal defense funds by encouraging members of the public to become "pen pals" with the inmates or to send donations. These meager funds should not be subject to forfeiture.