

SUBJECT: Offense for unauthorized operation of a recording device in a theater

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 6 ayes — Keel, Denny, Escobar, Hodge, Raymond, Reyna

0 nays

3 absent — Riddle, P. Moreno, Pena

WITNESSES: For — None

Against — Ann Del Llano, ACLU of Texas

DIGEST: HB 1871 would create the offense of unauthorized operation of a recording device in a movie theater. A person who knowingly operated an audiovisual recording function of any device during a movie without the theater owner's permission would commit a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

“Audiovisual recording function” would mean the capability of any current or future device to record or transmit any part of a motion picture. It would be a defense to prosecution that the audiovisual recording function of the device was operated solely for official law enforcement purposes.

A person could not obtain damages in a civil action against the owner, manager, or any agent or employee of the owner or manager of the theater for detaining that person on a good faith belief that the person had violated this law, unless the person could prove that:

- the person was detained longer than reasonably necessary to allow law enforcement authorities to arrive; or
- an act taken during the course of detaining the person was manifestly unreasonable.

The bill would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

HB 1871 would help protect the property of the film industry, which brings jobs and tourism to Texas and has played a large role in the state's economy. According to the Austin Film Society, film projects inject \$200 million into the Texas economy each year.

Texas' film industry is under threat by sophisticated criminals who use video cameras to illegally record films in the theater and then sell them on the Internet. Illegal recording of movies is a growing problem, especially as increasingly small recording devices such as video cameras and cell phones equipped with video capability make this practice even easier, yet Texas has no law specifically to punish this behavior. HB 1871 would protect the film industry by providing law enforcement with the tools to arrest and prosecute this form of theft. Eighteen other states and the District of Columbia have similar laws.

A state jail felony is an appropriate offense for first time offenders. Black-market films are relatively easy to make and offenders stand to gain huge profit. Therefore, a severe penalty is necessary as an effective deterrent. This bill would not contribute to prison overcrowding problems. Legislative Budget Board estimates indicate that this bill would not result in a significant impact on the workload of state corrections agencies.

**OPPONENTS
SAY:**

By making the recording of any film a felony, this bill could exacerbate an already severe prison overcrowding problem. The broad language of this bill also may have the unintended consequence of criminalizing harmless conduct. For instance, law enforcement could punish kids with a state jail felony for merely recording a segment of a film on their cell phone. Labeling a person as a felon creates life-long barriers to becoming a productive member of society. Rather than creating a new felony for potentially harmless conduct, a more appropriate solution would be to punish those who record a motion picture with the intent to distribute the film for profit.

NOTES:

The companion bill, SB 481 by Wentworth, passed the Senate by 30-0 on April 13. The House Criminal Jurisprudence Committee reported SB 481 favorably, as amended, on April 20, making it eligible to be considered in lieu of HB 1871.

As amended in the House committee, SB 481 would create a graduated punishment system for this offense. The offense would be a Class A misdemeanor, punishable by a maximum of one year in jail and/or a fine

not to exceed \$4,000. If the offender had one prior offense, the offense would be a state jail felony. If the offender had two or more prior offenses, the offense would be a third-degree felony, punishable by two to ten years in prison and a fine not to exceed \$10,000. For the offense to be punishable under SB 481, the individual would have to have knowingly operated the audiovisual recording function "with the intent to record a motion picture."

Last week, the U.S. Congress approved and sent to the president S. 167, which would establish a similar federal criminal offense for unauthorized recording of a motion picture in a movie theatre.