

SUBJECT: Creating the offense of contributing to the delinquency of a child

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Gallego, Christian, Fletcher, Hodge, Miklos, Moody, Riddle
0 nays
4 absent — Kent, Pierson, Vaught, Vo

WITNESSES: For — (*Registered, but did not testify:* Kevin Petroff, Harris County District Attorney’s Office; Ballard Shapleigh, 34th Judicial District Attorney’s Office)

Against — None

On — (*Registered, but did not testify:* Shannon Edmonds, Texas District and County Attorneys Association)

DIGEST: CSHB 3680 would amend Penal Code, ch. 22, by adding sec. 22.042 to create the offense of contributing to the delinquency of a child. A person would commit the offense if the person was 17 years of age or older and intentionally, knowingly, or recklessly caused or encouraged a child to:

- engage in conduct that, under the circumstances, would have caused the child to be present during the commission of a criminal offense; or
- enter or remain in a place where a controlled substance, a controlled substance analogue, drug paraphernalia, or marihuana, defined under Health and Safety Code, ch. 481, was used, possessed, manufactured, or distributed or where prostitution was practiced.

An offense would be punishable as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the actor committed the offense intentionally and knowingly. If the actor committed the offense recklessly, it would be punishable as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). If the conduct constituted both the offense of contributing to the delinquency of a child and another

criminal offense, the defendant could be prosecuted under either or both offenses.

A child would be defined as a person younger than 17 years of age.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 3680 would create an offense broad enough to cover situations in which not enough evidence was available to prosecute a crime as child endangerment. Child endangerment requires that the child be placed in imminent danger, which often is too high an evidence threshold for some situations that still could place children at risk. CSHB 3680 would provide a way to prosecute someone for recklessly placing a child in a dangerous situation by making it a class A misdemeanor, which also would provide an option for plea bargain or agreed disposition.

CSHB 3680 would help in prosecuting those who had committed serious crimes but did not necessarily require punishment at a high felony level. An example would be consensual sex acts where the age difference was four rather than three years, making the statutory rapist ineligible for the Romeo and Juliet exemption.

CSHB 3680 would not be overly broad in the situations it covered. It would contain specific intent requirements that a prosecutor would have to prove. Only acts done intentionally and knowingly would qualify as third-degree felonies. Crimes done recklessly would be punished as class A misdemeanors. In addition, judges, defense attorneys, juries, and voters would continue to act as checks against overreaching by a prosecutor.

Many states have laws prohibiting contribution to the delinquency of a child, including all of the states that border Texas, most southern states, and other large states such as California, New York, and Illinois.

**OPPONENTS
SAY:**

CSHB 3680 would be overbroad in the situations it would encompass. It could cover situations in which a child was in the presence of criminal activity but the parent had no control over the behavior of others. A family who had fallen on hard times and was living in a low-rent hotel where criminal activity, such as prostitution, was ongoing might be guilty of violating the statute. CSHB 3680 also could be used as a method of punishing any misdemeanor crime as a felony if the crime were done in the presence of a child. CSHB 3680 would cover a desperate mother who

paid for her groceries with a hot check while her child looked on. While hot check writing is often punishable as a misdemeanor, it could become a third-degree felony under CSHB 3680. While the goal of CSHB 3680 would be to protect children from dangerous environments, existing laws on child endangerment already provide adequate protections.

NOTES:

The substitute differs from the bill as filed by removing a subsection that did not allow ignorance that the victim was a child to be used as a defense to prosecution. It also inserted a specific reference to marijuana use in the list of places where a child could not be brought.