

SENATE AMENDMENTS

2nd Printing

By: Parker, Meyer, Frullo, Villalba, Fallon

H.B. No. 2291

A BILL TO BE ENTITLED

1 AN ACT
2 relating to increasing the punishment for certain persons convicted
3 of the offense of possession or promotion of child pornography.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 43.26(d) and (g), Penal Code, are
6 amended to read as follows:

7 (d) An offense under Subsection (a) is a felony of the
8 second [third] degree, except that the offense is a felony of the
9 first degree if it is shown on the trial of the offense that the
10 person has been previously convicted one or more times of an offense
11 under that subsection.

12 (g) An offense under Subsection (e) is a felony of the first
13 [second] degree.

14 SECTION 2. Section 508.145, Government Code, is amended by
15 adding Subsection (e-1) to read as follows:

16 (e-1) An inmate serving a sentence for an offense under
17 Section 43.26, Penal Code, is not eligible for release on parole
18 until the inmate's actual calendar time served, without
19 consideration of good conduct time, equals one-half of the inmate's
20 sentence.

21 SECTION 3. The change in law made by this Act applies only
22 to an offense committed on or after the effective date of this Act.
23 An offense committed before the effective date of this Act is
24 governed by the law in effect on the date the offense was committed,

1 and the former law is continued in effect for that purpose. For
2 purposes of this section, an offense was committed before the
3 effective date of this Act if any element of the offense occurred
4 before that date.

5 SECTION 4. This Act takes effect September 1, 2015.

ADOPTED

MAY 26 2015

Lacey Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY:

Chris Ferry

1 Amend H.B. No. 2291 (senate committee report) as follows:

2 (1) In SECTION 1 of the bill, strike amended Section
3 43.26(d), Penal Code (page 1, lines 22-26), and substitute the
4 following:

5 (d) An offense under Subsection (a) is a felony of the third
6 degree, except that the offense is:

7 (1) a felony of the second degree if it is shown on the
8 trial of the offense that the person has been previously convicted
9 one time of an offense under that subsection; and

10 (2) a felony of the first degree if it is shown on the
11 trial of the offense that the person has been previously convicted
12 two or more times of an offense under that subsection.

13 (2) In SECTION 1 of the bill, in amended Section 43.26(g),
14 Penal Code (page 1, lines 27-28), strike "first [~~second~~] degree"
15 and substitute "second degree, except that the offense is a felony
16 of the first degree if it is shown on the trial of the offense that
17 the person has been previously convicted of an offense under that
18 subsection".

19 (3) Strike SECTION 2 of the bill, adding Section
20 508.145(e-1), Government Code (page 1, lines 29-35).

21 (4) Renumber subsequent SECTIONS of the bill appropriately.

ADOPTED

FLOOR AMENDMENT NO. 2

MAY 26 2015

BY: VanTigh

Lately Spaw
Secretary of the Senate

1 Amend H.B. 2291 (senate committee printing) by adding the
2 following appropriately numbered SECTIONS to the bill and
3 renumbering subsequent SECTIONS accordingly:

4 SECTION ____ . Article 42.037, Code of Criminal Procedure,
5 is amended by adding Subsection (r) to read as follows:

6 (r) The court shall order a defendant convicted of an
7 offense under Section 43.26, Penal Code, to make restitution to:

8 (1) an individual who as a child younger than 18
9 years of age was depicted in the visual material, in an amount
10 equal to the expenses incurred by the individual as a result of
11 the offense, including:

12 (A) medical services relating to physical,
13 psychiatric, or psychological care;

14 (B) physical and occupational therapy or
15 rehabilitation;

16 (C) necessary transportation, temporary housing,
17 and child care expenses;

18 (D) lost income; and

19 (E) attorney's fees; or

20 (2) the compensation to child pornography victims
21 fund under Article 56.55 to the extent that:

22 (A) the fund has paid compensation to or on
23 behalf of the individual; or

24 (B) the court is unable to identify an
25 individual who as a child was depicted in the visual material,
26 in an amount determined by the court after considering:

27 (i) the average amount of the expenses
28 incurred by, and restitution ordered to, individuals in other
29 similar cases involving a conviction for an offense under

1 Section 43.26, Penal Code; and

2 (ii) other factors the court considers
3 appropriate.

4 SECTION ____ . Article 56.54(b), Code of Criminal Procedure,
5 is amended to read as follows:

6 (b) Except as provided by Subsections (h), (i), (j), and
7 (k) and Articles [Article] 56.541 and 56.55, the compensation to
8 victims of crime fund may be used only by the attorney general
9 for the payment of compensation to claimants or victims under
10 this subchapter. For purposes of this subsection, compensation
11 to claimants or victims includes money allocated from the fund
12 to the Crime Victims' Institute created by Section 96.65,
13 Education Code, for the operation of the institute and for other
14 expenses in administering this subchapter. The institute shall
15 use money allocated from the fund only for the purposes of
16 Sections 96.65, 96.651, and 96.652, Education Code.

17 SECTION ____ . Subchapter B, Chapter 56, Code of Criminal
18 Procedure, is amended by adding Article 56.55 to read as
19 follows:

20 Art. 56.55. COMPENSATION TO CHILD PORNOGRAPHY VICTIMS
21 FUND; PAYMENT OF AWARDS OR EXPENSES. (a) The compensation to
22 child pornography victims fund is an account in the general
23 revenue fund. Money in the account may be used only to:

24 (1) award compensation under this article; or

25 (2) provide grants related to preventing child
26 pornography and related offenses, including trafficking of
27 persons.

28 (b) The attorney general shall:

29 (1) adopt rules governing the administration of the
30 compensation to child pornography victims fund, including rules
31 establishing procedures for the application, review, and award

1 of compensation or the issuance of a grant under this article;
2 and

3 (2) notwithstanding any other provision of this
4 subchapter, transfer money from the compensation to child
5 pornography victims fund to a subaccount in the compensation to
6 victims of crime fund as necessary to award compensation or
7 provide a grant under this article.

8 (c) The attorney general shall award compensation to an
9 individual who as a child younger than 18 years of age was
10 depicted in visual material constituting the basis for one or
11 more convictions under Section 43.26, Penal Code, if the
12 attorney general finds by a preponderance of the evidence that
13 sufficient grounds exist for compensation under this article.

14 (d) An applicant for compensation under this article must
15 apply in writing on a form prescribed by the attorney general.
16 The applicant is not required to file an application under
17 Article 56.36 to receive compensation under this article.

18 (e) An award for compensation under this article must be
19 in an amount equal to the expenses incurred by the individual as
20 a result of the offense, including:

21 (1) medical services relating to physical,
22 psychiatric, or psychological care;

23 (2) physical and occupational therapy or
24 rehabilitation;

25 (3) necessary transportation, temporary housing, and
26 child care expenses;

27 (4) loss of past earnings; and

28 (5) attorney's fees for assistance in obtaining
29 compensation under this article.

30 (f) The attorney general shall reduce an award under this
31 article by the amount of restitution received by or on behalf of

1 the individual under Article 42.037 and may reduce the award to
2 the extent that the applicable expenses are recouped from
3 another collateral source, including compensation awarded under
4 Article 56.34.

5 (g) The attorney general may provide for the payment of an
6 award under this article in a lump sum or in installments.

7 (h) The attorney general by rule may limit the amount of
8 award that is payable to an individual under this article.

9 (i) The attorney general may use the compensation to
10 victims of crime fund to pay expenses associated with the
11 administration of the compensation to the child pornography
12 victims fund under this article.

13 (j) The attorney general may delegate a power, duty, or
14 responsibility given to the attorney general under this article
15 to a person in the attorney general's office.

16 (k) The name of an individual awarded compensation under
17 this article and any other identifying information regarding
18 that individual are confidential and not subject to disclosure
19 under Chapter 552, Government Code.

20 (l) To the extent of any conflict between this article and
21 another article of this subchapter regarding conduct for which
22 compensation may be awarded, this article controls.

23

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 28, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB2291** by Parker (Relating to increasing the punishment for certain persons convicted of the offense of possession or promotion of child pornography.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2291, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$0
2017	\$0
2018	\$0
2019	\$0
2020	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Crime Victims Comp Acct</i> 469	Change in Number of State Employees from FY 2015
2016	(\$273,073)	2.0
2017	(\$144,123)	2.0
2018	(\$144,123)	2.0
2019	(\$144,123)	2.0
2020	(\$144,123)	2.0

Fiscal Analysis

The bill would amend the Penal Code to enhance the punishment for the offenses of possession or promotion of child pornography. The bill would also amend the Code of Criminal Procedure to create the Compensation to Child Pornography Victims Fund as a dedicated account in the General Revenue Fund and require the Office of the Attorney General (OAG) to administer the

account.

This analysis assumes implementing the provisions of the bill would not result in a significant fiscal impact on state correctional agencies.

Under the bill provisions, the OAG indicated the fiscal impact for administering the Compensation to Child Pornography Victims Fund would be \$273,073 in fiscal year 2016, \$144,123 each fiscal year from 2017-2019, and \$159,123 in fiscal year 2020. Costs include salaries for 2.0 FTEs, general operating, lease space, postage, travel, capital equipment, and benefits.

The Office of Court Administration and the Comptroller of Public Accounts indicated the costs associated with implementation of the bill could be absorbed with existing resources. The Comptroller of Public Accounts (CPA) and OAG indicated the revenue collected from court order restitution cannot be estimated.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

The bill would take effect September 1, 2015.

Methodology

Currently, the OAG administers the Compensation to Victims of Crime Fund (Fund 469). However, under the bill provisions all compensation awards to victims of child pornography would be awarded from the Compensation to Child Pornography Victims Fund and Fund 469 would be available only for certain grants and administration costs. The Compensation to Child Pornography Victims Fund would be funded by court ordered restitution from offenders and compensation to victims could only be awarded if restitution is collected.

The OAG and CPA indicated the following are unknown factors related to the fiscal impact under the bill provisions:

- 1) The number of victims who would seek compensation;
- 2) The number of offenders who would be ordered to pay restitution; and
- 3) The amount of restitution that would be collected.

The bill provisions require the OAG to administer the Compensation to Child Pornography Victims Fund. The OAG estimates administering the Compensation to Child Pornography Victims Fund would require one Reimbursement Officer III (1.0 FTEs) and one Account I (1.0 FTEs) with a combined fiscal year cost of \$109,000 for salaries (\$81,416) and related benefits (\$27,584).

The OAG estimates it would provide training and informational materials to law enforcement personnel, court officials, and victim advocates, as well as develop a new business process related to applications for compensation from the Compensation to Child Pornography Victims Fund.

Technology

There would be a technology impact related to computer hardware, software, telecommunications equipment, and network storage estimated to be \$8,030 in fiscal year 2016 and \$4,680 in subsequent fiscal years.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: UP, KJo, EP, TBo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB2291** by Parker (Relating to increasing the punishment for certain persons convicted of the offense of possession or promotion of child pornography.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to enhance the punishment for the offenses of possession or promotion of child pornography and make individuals convicted of these offenses ineligible for release to parole supervision until their calendar time served, without consideration of good conduct time, equaled one-half of their sentence. This analysis assumes implementing the provisions of the bill would not result in a significant fiscal impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, LM, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 24, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2291 by Parker (Relating to increasing the punishment for certain persons convicted of the offense of possession or promotion of child pornography.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to enhance, for those with previous convictions, the punishment for the offenses of possession or promotion of child pornography. This analysis assumes implementing the provisions of the bill would not result in a significant fiscal impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, KJo, LM, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

May 28, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2291 by Parker (Relating to increasing the punishment for certain persons convicted of the offense of possession or promotion of child pornography.), **As Passed 2nd House**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Penal Code to allow the punishment for possession of child pornography to be enhanced from a third to a second or a first degree felony for those with previous possession of child pornography convictions. The bill would also enhance the punishment for the promotion of child pornography from a second to a first degree felony.

A first degree felony is punishable by confinement in prison for life or five to 99 years, a second degree felony for two to 20 years, and a third degree felony for two to ten years. In addition to confinement certain felony level offenses are subject to an optional fine not to exceed \$10,000.

Enhancing the penalty for any criminal offense and increasing the amount of time an offender must serve before becoming eligible for parole is expected to result in increased demands upon the correctional resources of counties or of the state due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. In fiscal year 2014, 253 people were arrested, 55 were placed under felony community supervision, and 97 were admitted into state correctional institutions for possession of child pornography. In fiscal year 2014, 54 people were arrested, fewer than ten were placed under felony community supervision, and fewer than ten were admitted into state correctional institutions for promotion of child pornography. This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional populations, programs, or workloads.

Source Agencies:

LBB Staff: UP, LM, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2291 by Parker (Relating to increasing the punishment for certain persons convicted of the offense of possession or promotion of child pornography.), **As Engrossed**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Penal Code to enhance the punishment for possession of child pornography from a third to a second degree felony or a first degree felony for those with previous possession of child pornography convictions. The bill would also enhance the punishment for the promotion of child pornography from a second to a first degree felony. The bill would make individuals convicted of these offenses ineligible for release to parole supervision until their calendar time served, without consideration of good conduct time, equaled one-half of their sentence.

A first degree felony is punishable by confinement in prison for life or five to 99 years, a second degree felony for two to 20 years, and a third degree felony for two to ten years. In addition to confinement certain felony level offenses are subject to an optional fine not to exceed \$10,000.

Enhancing the penalty for any criminal offense and increasing the amount of time an offender must serve before becoming eligible for parole is expected to result in increased demands upon the correctional resources of counties or of the state due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. In fiscal year 2014, 253 people were arrested, 55 were placed under felony community supervision, and 97 were admitted into state correctional institutions for possession of child pornography. In fiscal year 2014, 54 people were arrested, fewer than ten were placed under felony community supervision, and fewer than ten were admitted into state correctional institutions for promotion of child pornography. This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional populations, programs, or workloads.

Source Agencies:

LBB Staff: UP, LM, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

March 24, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2291 by Parker (Relating to increasing the punishment for certain persons convicted of the offense of possession or promotion of child pornography.), **As Introduced**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Penal Code to enhance the punishment for possession of child pornography from a third degree to a second felony if the person had previously been convicted of this offense and to a first degree felony if the person had previously been convicted two or more times of this offense. The bill would also enhance the punishment for the promotion of child pornography from a second degree to a first degree felony if the person had previously been convicted of this offense.

A first degree felony is punishable by confinement in prison for life or five to 99 years, a second degree felony for two to 20 years, and a third degree felony for two to ten years. In addition to confinement all felony level offenses are subject to an optional fine not to exceed \$10,000.

Enhancing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. In fiscal year 2014, fewer than ten people were arrested, fewer than ten were placed under felony community supervision, and fewer than ten were admitted to state correctional institutions for the circumstances enhancing possession of child pornography. In fiscal year 2014, fewer than ten people were arrested, fewer than ten were placed under felony community supervision, and fewer than ten were admitted to state correctional institutions for the circumstances enhancing promotion of child pornography. This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional populations, programs, or workloads.

Source Agencies:

LBB Staff: UP, LM, JPo