

**House Bill 2291**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

(d) An offense under Subsection (a) is a felony of the second ~~third~~ degree, except that the offense is

a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted one or more times of an offense under that subsection.

(g) An offense under Subsection (e) is a felony of the first ~~second~~ degree.

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

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

No equivalent provision.

SENATE VERSION (IE)

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

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

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

(2) a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under that subsection. [FA1(1)]

(g) An offense under Subsection (e) is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subsection. [FA1(2)]

SECTION 2. Section 508.145, Government Code, is amended by adding Subsection (e-1) to read as follows: [Deleted by FA1(3)]

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

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

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

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- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income; and
- (E) attorney's fees; or
- (2) the compensation to child pornography victims fund under Article 56.55 to the extent that:
  - (A) the fund has paid compensation to or on behalf of the individual; or
  - (B) the court is unable to identify an individual who as a child was depicted in the visual material, in an amount determined by the court after considering:
    - (i) the average amount of the expenses incurred by, and restitution ordered to, individuals in other similar cases involving a conviction for an offense under Section 43.26, Penal Code; and
    - (ii) other factors the court considers appropriate. [FA2]

No equivalent provision.

SECTION \_\_. Article 56.54(b), Code of Criminal Procedure, is amended to read as follows:  
(b) Except as provided by Subsections (h), (i), (j), and (k) and Articles [Article] 56.541 and 56.55, the compensation to victims of crime fund may be used only by the attorney general for the payment of compensation to claimants or victims under this subchapter. For purposes of this subsection, compensation to claimants or victims includes money allocated from the fund to the Crime Victims' Institute created by Section 96.65, Education Code, for the operation of the institute and for other expenses in administering this subchapter. The institute shall use money allocated from the

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fund only for the purposes of Sections 96.65, 96.651, and 96.652, Education Code. [FA2]

No equivalent provision.

SECTION \_\_. Subchapter B, Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.55 to read as follows:

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

- (1) award compensation under this article; or
- (2) provide grants related to preventing child pornography and related offenses, including trafficking of persons.

(b) The attorney general shall:

- (1) adopt rules governing the administration of the compensation to child pornography victims fund, including rules establishing procedures for the application, review, and award of compensation or the issuance of a grant under this article; and

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

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

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

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

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

(2) physical and occupational therapy or rehabilitation;

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

(4) loss of past earnings; and

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

(f) The attorney general shall reduce an award under this article by the amount of restitution received by or on behalf of the individual under Article 42.037 and may reduce the award to the extent that the applicable expenses are recouped from another collateral source, including compensation awarded under Article 56.34.

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

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

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

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

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

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

[FA2]

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. Same as House version.

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

SECTION 4. Same as House version.