

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 25, 2007**

**TO:** Honorable Tom Craddick, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB8** by Riddle (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.), **As Passed 2nd House**

No significant fiscal impact is anticipated for the first five years following passage of the bill. However the impact of the provision of the bill eliminating community supervision for certain sex offenders could have a significant and immediate impact on correctional populations. The impact of that provision cannot be determined due to the unavailability of reliable data related to the age of victims involved in community supervision and deferred adjudication cases.

The bill would amend the Code of Criminal Procedure by: 1) stating on request of a county or district attorney, the attorney general shall provide investigative, technical, and litigation assistance; 2) amending the limitations on the presentation of felony indictments relating to sexual offenses committed against children; 3) specifying life imprisonment for persons convicted of certain repeat sex offenses against children in cases which the state does not seek the death penalty; 4) removing the possibility of judge ordered community supervision for certain persons with a previous conviction for the offense of sexual performance by a child, if the victim is younger than 14 years of age; 5) removing the possibility of jury recommended community supervision for certain sexual offenses committed against children younger than the age of 14; 6) removing the possibility of deferred adjudication for defendants charged with the newly created offense of continuous sexual abuse of child or children, or the offense of aggravated sexual assault; and 7) requiring information in the computerized criminal history system to include the age of the victim of certain sex offenses.

The bill would amend the Government Code by: 1) requiring the submission, in each odd-numbered year, of a report summarizing the arrests, prosecutions and dispositions concerning certain sex offenses; 2) requiring the Texas Department of Criminal Justice to establish a sex offender treatment program and psychologically evaluate sex offenders; 3) removing the possibility of parole for defendants serving a sentence for certain sex offenses; and 4) removing the possibility of mandatory supervision release for defendants convicted of the newly created offense of continuous sexual abuse of child or children, and the offense of sexual performance by a child if the victim was younger than 14 years of age.

The bill would amend the Health and Safety Code by stating the conditions of a tracking service for civilly committed persons and the cost to those individuals for the tracking service.

The bill would amend the Penal Code by: 1) amending the penalties for the repeat and habitual felony offenders provision to include the offense of indecency with a child (by contact) and to make punishable as a capital felony the offense of aggravated sexual assault committed against a child age six or younger, or age 14 or younger in connection with administering a controlled substance when the defendant has a previous conviction for the same, or similar offense; 2) creating the offense of continuous sexual abuse of young child or children punishable as a felony of the first degree and punishable by imprisonment for life or for any term of not more than 99 years or less than 25 years; 3) setting the minimum term of imprisonment for the offense of aggravated sexual assault to 25 years if the victim of the offense is younger than six years of age or if the victim of the offense is younger than 14 years of age and the actor administers a controlled substance to facilitate the offense; 4) enhancing the punishment for the offense of sexual performance by a child by one penalty grade if the victim is

younger than 14 years of age at the time the offense is committed.

The bill would amend the Government Code by requiring local administrative district judges, or the presiding judges of a division responsible for trying criminal cases, to prioritize cases involving certain sexual offenses committed against children to ensure priority is given to such cases.

The bill would amend the Civil Practices and Remedies Code, Education Code, Family Code relating to the changes made for offenders identified by the proposal.

The bill also would amend the Code of Criminal Procedure relating to protective orders, personal bond, bail, search warrants, appeals, and the sentence reform should the United States Supreme Court issues an order that is not consistent with this proposal.

The provisions of the bill affecting the Office of the Attorney General, Texas Department of Public Safety (DPS), Texas Department of Criminal Justice (TDCJ), and Department of State Health Services (DSHS) are not expected to result in a significant fiscal impact to those agencies, and could be reasonably absorbed with current resources.

The impact of several provisions of the bill cannot be determined due to the unavailability of reliable data or information related to the circumstances involved in the proposals. No data is available on the duration of sex offenses and the number of sexual abuse acts committed that would help in estimating the number of times that the newly created offense of continuous sexual abuse of young child or children would be applied.

The impact of the provision of the bill setting the minimum term of imprisonment to 25 years for aggravated sexual assault of a child under 14 years of age and administered or provided certain controlled substances with the intent of facilitating the commission of the offense cannot be determined due to the unavailability of reliable data or information relating to the use of controlled substances in the commission of aggravated sexual assault.

Also, the impact of provisions of the bill removing the possibility of deferred adjudication and community supervision for the offenses of indecency with a child, aggravated sexual assault, sexual assault, sexual performance by a child, and aggravated kidnapping, where the victim was younger than 14, cannot be determined due to the unavailability of the age of the victim for such offenses. In fiscal year 2006, 1,449 offenders were placed on community supervision for such offenses committed against children; at present the aforementioned offenses define a child as anyone under the age of 18. The impact of shifting such offenders from community supervision to prison could have an immediate and significant impact on prison populations.

Other provisions of the bill are not expected to have a significant fiscal impact given the proposal would apply to offenses committed on or after September 1, 2007, and under current law and policy, individuals convicted of sexually violent offenses serve a very high percentage of their sentence. In fiscal year 2006, there were 831 offenders admitted to the Texas Department of Criminal Justice (TDCJ) for aggravated sexual assault of a child. The average sentence length was 21 years. Fiscal year 2006 releases from prison for aggravated sexual assault of a child served approximately 95 percent of their sentence. It is estimated that under current law and policy offenders sentenced to TDCJ for aggravated sexual assault of a child will serve approximately 20 years in prison.

The provision of the bill that can be estimated based on available data is the provision that would set the minimum term of imprisonment to 25 years for the offense of aggravated sexual assault if the victim of the offense is younger than 6 years of age. Based on a sample of fiscal year 2006 TDCJ intakes for sexual assault of a child, it is estimated that 178 (21.4%) of the 831 TDCJ admissions for aggravated sexual assault of a child committed their offense against children under the age of 6, which would set the minimum term of imprisonment to 25 years according to the bill. The 178 offenders are then placed in a simulation model that calculates the difference in sentencing and release policy based on whether the offenders are eligible for release according to current statute, or based on the provisions of the bill. The simulation model indicates the impact of this particular provision of the bill would not be fully realized in the first five years following passage. The additional time served requirement of the bill would likely result in the need for an additional 777 beds by the end of fiscal

year 2027.

**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, 405 Department of Public Safety, 696 Department of Criminal Justice

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