

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 16, 2007

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
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.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated for the first five years following passage of the bill.

The bill, known as the Jessica Lunsford Act, would amend the Government Code, Code of Criminal Procedure, Health and Safety Code, Penal Code, Civil Practice and Remedies Code, Family Code, Education Code, and Occupations Code relating to the prosecution, punishment and supervision of certain sex offenders.

The bill would amend the Code of Criminal Procedure by requiring that the attorney general may offer to a county or district attorney assistance in the prosecution of certain sex offenses when the victim is younger than 17 years of age. The attorney general shall assist in the prosecution of such offenses on request of a county or district attorney. The Office of the Attorney General anticipates no significant fiscal impact from this provision of the bill.

The bill would amend the Government Code by requiring the Texas Department of Criminal Justice (TDCJ) to establish a sex offender treatment program to treat inmates serving sentences for certain sex offenses and require such inmates to participate in and complete the program before being released. TDCJ anticipates no significant fiscal impact from this provision of the bill.

The bill would amend the Health and Safety Code by requiring a tracking service to track the locations of outpatient civil commitment patients in real time. The tracking service would periodically provide cumulative reports of locations of the civil commitment patients to case managers. A civilly committed person who is not indigent is responsible for the cost of the tracking service required by the bill. No significant fiscal impact to the state from this provision of the bill is anticipated.

The bill would amend the Code of Criminal Procedure by making no limitation for felony indictments for certain cases of the offenses of sexual assault, continuous sexual abuse of young child or children, and indecency with a child. The bill would also allow the presenting of felony indictments 20 years from the 18th birthday of the victim if the victim is younger than 17 years of age at the time of the offense and the offense committed is sexual performance by a child, aggravated kidnapping if the defendant committed the offense with the intent to violate or abuse the victim sexually, and burglary if the offense is committed with the intent to violate or abuse the victim sexually.

The bill would amend the Penal Code by increasing 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 at the time of the offense, or the victim of the offense is younger than 14 years of age and the actor causes serious bodily injury. If it is shown on the trial of the offense of aggravated sexual assault that the victim of the offense is younger than 6 years of age, or if the victim of the offense is younger than 14 years of age and the actor causes serious bodily injury, and the defendant has previously been finally convicted of the same, or substantially similar offenses, the offense would be punishable as a capital felony.

The bill would amend the Penal Code by creating the offense of continuous sexual abuse of young child or children. The offense would occur in cases during a period that is 30 or more days in duration, involving the commission of two or more acts of sexual abuse committed against one or more victims. The offense would be punishable as a felony of the first degree, punishable by imprisonment for life, or for any term of not more than

99 years or less than 25 years.

The bill would amend the Code of Criminal Procedure as it relates to the eligibility of community supervision for certain sex offenses.

The bill would also amend the Penal Code relating to the offense of hindering apprehension or prosecution under certain circumstances.

The punishment for the offense of sexual performance of a child would be increased by one grade of felony if the victim is younger than 14 years of age at the time of the offense.

The bill would also amend the Government Code by requiring trial courts to give preference in setting hearings and trials for certain sexually assaultive offenses.

The bill would amend the Education Code relating to the transfer of students involved in sexual assault and the expulsion of students involved in the offense of continuous sexual abuse of young child or children.

The bill would amend the Family Code relating to the report of sexual abuse of a minor, confidentiality, modification of order on conviction for child abuse, involuntary termination of parent-child relationship, termination when pregnancy results from criminal act, and other parent child relationship issues.

The bill would amend the Government Code relating to eligibility for release to intensive supervision, physician employed orchiectomies, extraordinary parole votes, diversion of inmates to halfway houses, for inmates convicted of sexually assaultive offenses against children.

The bill would amend the Health and Safety Code relating to reports of abuse and neglect, and convictions barring employment. The bill would amend the Occupations Code regarding nursing licenses for the offense of continuous sexual abuse of young child or children.

The bill would also amend the Penal Code by including the offense of continuous sexual abuse of a child in provisions dealing with: allowing multiple offenses arising out of the same criminal episode to run concurrently or consecutively, allowing the punishment for a state jail felony offense be punished for a third degree felony, for the offense of continuous sexual abuse of young child or children, criminal solicitation of a minor, and failure to stop or report aggravated sexual assault of child.

Given the proposal would apply to offenses committed on or after September 1, 2007, and that under current law and policy, individuals convicted of sexually violent offenses serve a very high percentage of their sentence, the full impact of this proposal will not be realized in the first five years of implementation. Many of the provisions of the bill are not anticipated to have a significant fiscal impact because they either impact a small percentage of persons convicted of sexually violent offenses, or because under current policy and under the proposal, the individuals are expected to be incarcerated for a period of time close to their maximum term.

The impact of the provision creating the offense of continuous sexual abuse of young child or children cannot be determined due to the unavailability of reliable data or information related to 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 provision of the bill that is expected to have the largest and most immediate impact is the provision that would set 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. For fiscal year 2006, the Texas Department of Criminal Justice received 831 admissions for the offense of aggravated sexual assault (of a child). Based on a sample of fiscal year 2006 TDCJ intakes for the offense of aggravated sexual assault (of a child), it is estimated that 178 (21.4%) of the 831 offenders 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 according to current statute, or based on the provisions of the bill. The simulation model indicates that 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 fiscal year 2027.

Local Government Impact

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

Source Agencies:

LBB Staff: JOB, ES, GG