

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

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

**April 16, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

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

**IN RE: HB2260** by Hardcastle (Relating to penalties for repeat and habitual felony offenders.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2260, As Introduced: a negative impact of (\$207,413,036) through the biennium ending August 31, 2009.

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:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2008	(\$15,119,666)
2009	(\$192,293,370)
2010	(\$400,553,601)
2011	(\$556,996,345)
2012	(\$646,612,222)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from GENERAL REVENUE FUND 1</b>
2008	(\$15,119,666)
2009	(\$192,293,370)
2010	(\$400,553,601)
2011	(\$556,996,345)
2012	(\$646,612,222)

**Fiscal Analysis**

The bill would amend the Penal Code as it relates to repeat and habitual offenders. The bill would provide penalty enhancements for individuals convicted of subsequent felony offenses.

An individual on trial for a state jail felony would receive penalty enhancements as follows: 1) previously convicted of a state jail felony, minimum term of confinement is 9 months; 2) previously convicted of any felony, minimum term of confinement is 12 months; and 3) previously convicted twice of felony offenses, minimum term of confinement is two years and is considered convicted of a third degree felony.

An individual on trial for a felony of the third degree would receive penalty enhancements as follows: 1) previously convicted of a state jail felony, minimum term of confinement is four years; 2)

previously convicted of a second degree felony, minimum term of confinement is five years; and 3) previously convicted twice of felony offenses, minimum term of confinement is five years and is considered convicted of a second degree felony.

An individual on trial for a felony of the second degree would receive penalty enhancements as follows: 1) previously convicted of a state jail felony, minimum term of confinement is six years; 2) previously convicted of a second or first degree felony, minimum term of confinement is five years and is considered convicted of a felony of the first degree; and 3) previously convicted twice of felony offenses, minimum term of confinement is 15 years and is considered convicted of a first degree felony.

An individual on trial for a felony of the first degree would receive penalty enhancements as follows: 1) previously convicted of a state jail or third degree felony, minimum term of confinement is 10 years; 2) previously convicted of a second degree felony, minimum term of confinement is 15 years; and 3) previously convicted twice of felony offenses, minimum term of confinement is 25 years.

The bill would also add indecency with a child and sexual performance by a child to the list of offenses for which a person would be imprisoned for life. The bill would also further clarify when a person is considered to have been convicted of an offense for enhancement purposes.

The bill would take effect September 1, 2007 and apply only to an offense committed on or after the effective date.

## **Methodology**

Based on fiscal year 2006 admissions to the Texas Department of Criminal Justice (TDCJ), 46% of state jail admissions and 37% of prison admissions would qualify for enhanced punishments, as prescribed by the bill. The average additional amount of time served by state jail admissions as a result of the bill would be 149 days. The average additional amount of time served by prison admissions as a result of the bill would be 923 days.

In order to estimate the future impact of the proposal, the changes proposed for release policy are applied in a simulation model to admissions reflecting the changes from the bill. Costs of incarceration by the Department of Criminal Justice are estimated on the basis of \$40 per inmate per day for prison and \$36.53 per inmate per day for state jail, reflecting approximate costs of either operating facilities or contracting with other entities. No costs are included for prison construction. Options available to address the increased demand for prison capacity that would result from the implementation of the bill include construction of new facilities and contracting with counties or private entities for additional capacity. Estimated savings from a decrease in offenders on parole supervision as a result of increased time served in prison are estimated on the basis of an active supervision cost of \$3.51 per day.

The provision of the bill making the offenses of indecency with a child and sexual performance by a child punishable by life if guilty of other certain previous offenses would not result in a significant impact for the first five years of implementation, given the proposal would apply to offenses committed on or after September 1, 2007 and under current law and policy, individuals already serve a high percentage of their sentence. However, the provision would likely result in significant needs beyond the five year timeframe of this analysis.

## **Local Government Impact**

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

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ES, GG, LM, KJG