

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 12, 2007

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

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

IN RE: SB5 by Deuell (Relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB5, As Introduced: an impact of \$0 through the biennium ending August 31, 2009.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	(\$1,034,167)
2012	(\$3,587,950)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from GENERAL REVENUE FUND 1
2008	\$0
2009	\$0
2010	\$0
2011	(\$1,034,167)
2012	(\$3,587,950)

Fiscal Analysis

The bill would amend the Code of Criminal Procedure by: 1) changing the statute of limitations so that a felony indictment may be presented within 20 years from the 18th birthday of the victim of a sexually violent offense, if the investigation of the offense shows that the victim is younger than 14 years of age at the time of the offense; 2) providing for penalty and procedure changes if the victim of a sexually violent offense was younger than 14 at the time of the offense; and 3) including sexually violent offenses committed against a child younger than 14 in the capital case procedure portion of the code.

The bill would amend the Government Code by denying parole to those convicted of offenses identified as sexually violent by the bill and if the victim of the offense was younger than 14 years of age.

The bill would amend the Government Code by eliminating the possibility of mandatory supervision release for all persons convicted of the offense of indecency with a child, sexual assault, or a first degree felony conviction of sexual performance of a child.

The bill would amend the Health and Safety Code by requiring a tracking service to track in real-time the

locations of outpatient civil commitment patients. The tracking service would periodically provide cumulative reports of locations of the civil commitment patients to case managers. The bill would make non-indigent civilly committed persons responsible for the cost of the tracking service.

The bill would define the term “sexually violent offense” and includes in the definition indecency with a child (engaging in sexual contact), as well as sexual assault, aggravated sexual assault, sexual performance by a child, and the offenses of aggravated kidnapping and burglary if the intent is to commit indecency with a child or to violate or abuse the victim sexually. The bill would add indecency with a child and sexual performance by a child to the list of offenses that are punishable by life in prison if the defendant has previously been convicted of similar sexually violent offenses. A sexually violent offense would be punishable as a capital felony if the victim was younger than 14, and if the defendant has been previously convicted of a sexually violent offense against a person younger than 14.

The bill would set the minimum term of imprisonment to 25 years if the offense is a sexually violent offense punishable as a felony of the first degree and that the victim is younger than 14 years of age. The bill would enhance the punishment for the offense of indecency with child from a third degree felony to a felony of the first degree if the victim is younger than 14 years of age.

The bill would enhance the punishment for the offense of sexual performance of a child from a second degree felony to a felony of the first degree if the victim is younger than 14 years of age, and from a third degree felony to a felony of the first degree if the victim is younger than 14 years of age.

Methodology

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 (90.1%). Additionally, according to a sample of sexually assaultive intakes admitted to the Texas Department of Criminal Justice (TDCJ) in fiscal year 2006, those who committed their offense against victims under the age of 14 received a longer sentence (16 years) than those who committed their offenses against children ages 14 and older (7.6 years). The Department of State Health Services has stated that they anticipate no fiscal impact from the provision of the bill further specifying tracking services for civil commitment outpatients. 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 to 25 years if the offense is a sexually violent offense punishable as a felony of the first degree and that the victim is younger than 14 years of age.

For fiscal year 2006, the Texas Department of Criminal Justice (TDCJ) received 2,141 admissions for the offenses of indecency with a child, sexual performance of a child, sexual assault (of a child) and aggravated sexual assault (of a child). Based on a sample of fiscal year 2006 TDCJ intakes for the Penal Code citations listed in the bill, it is estimated that 1,503 (70.2%) of the 2,141 offenders committed their offense against children under the age of 14, which would set the minimum term of imprisonment to 25 years according to the bill. The 1,503 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 9,500 beds by fiscal year 2025.

Local Government Impact

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

Source Agencies: 537 State Health Services, Department of, 539 Aging and Disability Services, Department of, 696 Department of Criminal Justice

LBB Staff: JOB, ES, GG