

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 15, 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.), **Committee Report 1st House, Substituted**

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

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, aggravated sexual assault, 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, burglary if the offense is committed with the intent to violate or abuse the victim sexually.

The bill would amend the Code of Criminal Procedure relating to the penalty phase of a trial of a felony case relating to sexually violent offenses in which the victim of the offense is younger than 14 years of age at the time the offense was committed.

The bill would amend the Code of Criminal Procedure relating to capital felony cases. If it is shown on the trial of a sexually violent offense punishable as a felony of the first degree that the victim of the offense is punishable as a felony of the first degree and the victim of the offense is younger than 14 years of age and the defendant has previously been finally convicted of a sexually violent offense in which the victim of the offense was younger than 14 years of age, the offense would be punishable as a capital felony.

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 a sentence for an offense punishable under Section 12.50 or 12.42(c)(2), Penal Code, and who are not eligible for release on parole. The department would require an inmate required to undergo treatment to complete the sex offender treatment program before being released from the department. It is assumed that implementation of this provision of the bill would not result in significant cost to the State.

The bill would amend the Penal Code by setting the minimum term of imprisonment at 25 years for a sexually violent offense punishable as a felony of the first degree in which the victim is younger than 14 years of age at the time of the offense. The bill lists the offenses of sexual assault, aggravated sexual assault, sexual performance by a child, aggravated kidnapping (with intent to violate or abuse sexually), burglary (with intent to violate or abuse sexually) as sexually violent offenses.

The offense of sexual performance of a child would be punishable as a felony of the first degree if the victim is younger than 14 years of age at the time of the offense.

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%).

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 1,310 admissions for the offenses of 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 920 (70.2%) of the 1,310 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 920 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 3,600 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, 696 Department of Criminal Justice
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