

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 18, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

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

IN RE: SB407 by Watson (Relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense.), **Committee Report 2nd House, As Amended**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to create several misdemeanor offenses related to the electronic transmission or possession of certain visual material by a minor that depicts a minor as defined by the provisions of the bill. The bill also would establish exceptions to the offense if the actor is a law enforcement officer or a school administrator who possessed the visual material as specified by the provisions; if at the time of the offense the actor or another minor who is not more than two years older or younger was in a dating relationship, or who was the spouse of the actor; the visual material was promoted or received only to or from the actor and the other minor; did not produce or solicit the visual material; received the material from another minor; and destroyed the visual material within a reasonable amount of time. The bill would specify that notwithstanding Section 51.13, Family Code, a person that violates this section would be considered a conviction for the purposes of Subsections (c) and (d).

A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. A Class B misdemeanor is punishable by a fine of not more than \$2,000, confinement in jail for a term not to exceed 180 days, or both. A Class C misdemeanor is punishable by a fine of not more than \$500.

The bill would amend the Code of Criminal Procedure to require the judge of a county court to take a defendant's plea in open court and to require a parent to attend a court appearance. A court that determines a defendant has committed an offense under Section 43.261 of the Penal Code, or a judge that grants community supervision, could order a defendant to attend and successfully complete an educational program regarding the psychological and social consequences, including possible legal consequences or another equivalent program. The court could also require the defendant or the defendant's parent to pay the cost of the program if financially able.

The bill would require a court to expunge all records of a defendant that was convicted of only one offense on or after the person's 17th birthday as defined by the provisions of the bill.

The bill would amend sections of the Family Code to require a court to waive its original jurisdiction and refer a child to a juvenile court if the complaint pending against the child alleges a violation of a misdemeanor offense under Section 43.216 of the Penal Code, punishable by fine only as defined by the provisions of the bill. A finding that a child engaged in conduct indicating a need for supervision would be a conviction only for the purposes of Sections 43.261(c) and (d) of the Penal Code. The bill would specify that conduct that violates Section 43.261 of the Penal Code, punishable as a Class B misdemeanor or any higher offense, would indicate a need for supervision. A juvenile court could order a child determined to have engaged in conduct indicating a need for supervision, to attend and successfully complete an educational program regarding the psychological and social consequences, including possible legal consequences or another equivalent program; and would authorize the child's records to be sealed. The court could also require the child or the child's parent to pay the cost of the

program if financially able.

A prosecuting attorney or a juvenile probation department that is authorized to maintain a separate record containing the child's name, date of birth, and the date the child successfully completed the program would be required to send the record to the court to be added to the child's other sealed records as soon as practicable after the child's 17th birthday.

The bill would specify that a proceeding to enter a juvenile court order for payment of the cost of attending an educational program under Section 54.0404 of the Family Code.

The bill would amend the Education Code to include definitions for bullying, cyberbullying, harassment, and sexual conduct. The Texas School Safety Center (TSSC) would be required, in consultation with Office of the Attorney General, to develop programs for schools that address possible legal and other consequences, including criminal penalties; the unique characteristics of the Internet and other electronic communications; and the connection between bullying, cyberbullying, and harassment related to transmitting certain visual material of a minor as defined by the provisions of the bill. TSSC would be required to develop the program by January 1, 2012. Each school district would be required to provide information on the programs developed and available to parents and students by any means necessary on an annual basis.

The bill would take effect September 1, 2011.

Local Government Impact

Costs associated with enforcement, prosecution and confinement, and revenue gain from fines imposed and collected would vary depending on the number of offenses committed; however, it is not anticipated to have a significant fiscal impact.

There could be additional administrative costs to a school district to annually provide the required program information to parents and students; however, it is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 405 Department of Public Safety, 665 Juvenile Probation Commission, 701 Central Education Agency, 758 Texas State University System

LBB Staff: JOB, ESi, TP, JM, TB, MWU, RBl, YD