

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/15
Date

Honorable Dan Patrick
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2291 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Charles Perry
CHARLES PERRY

Tom Parker
Rep. Parker (Chair)

John Whitmire
John Whitmire

Rep. Fallon
Rep. Fallon

Joan Huffman
Joan HUFFMAN

Rep. Hernandez
Rep. Hernandez

Brenda Cecht
Brandon Aughton

Rep. Meyer
Rep. Meyer

Tommie Burton
On the part of the Senate

Rep. Paddie
On the part of the House

Konnie Burton

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2291

A BILL TO BE ENTITLED

AN ACT

relating to the payment of restitution to certain individuals depicted in child pornography and to increasing the punishment for certain individuals convicted of the offense of possession or promotion of child pornography.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.037, Code of Criminal Procedure, is amended by adding Subsection (r) to read as follows:

(r) The court may order a defendant convicted of an offense under Section 43.26, Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

(1) medical services relating to physical, psychiatric, or psychological care;

(2) physical and occupational therapy or rehabilitation;

(3) necessary transportation, temporary housing, and child care expenses;

(4) lost income; and

(5) attorney's fees.

SECTION 2. Sections 43.26(d) and (g), Penal Code, are amended to read as follows:

(d) An offense under Subsection (a) is a felony of the third

1 degree, except that the offense is:

2 (1) a felony of the second degree if it is shown on the
3 trial of the offense that the person has been previously convicted
4 one time of an offense under that subsection; and

5 (2) a felony of the first degree if it is shown on the
6 trial of the offense that the person has been previously convicted
7 two or more times of an offense under that subsection.

8 (g) An offense under Subsection (e) is a felony of the
9 second degree, except that the offense is a felony of the first
10 degree if it is shown on the trial of the offense that the person has
11 been previously convicted of an offense under that subsection.

12 SECTION 3. The change in law made by this Act applies only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect on the date the offense was committed,
16 and the former law is continued in effect for that purpose. For
17 purposes of this section, an offense was committed before the
18 effective date of this Act if any element of the offense occurred
19 before that date.

20 SECTION 4. This Act takes effect September 1, 2015.

House Bill 2291
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTION __. Article 42.037, Code of Criminal Procedure, is amended by adding Subsection (r) to read as follows:

(r) The court **shall** order a defendant convicted of an offense under Section 43.26, Penal Code, to make restitution to:

(1) an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income; and

(E) attorney's fees; *or*

(2) *the compensation to child pornography victims fund under Article 56.55 to the extent that:*

(A) *the fund has paid compensation to or on behalf of the individual; or*

(B) *the court is unable to identify an individual who as a child was depicted in the visual material, in an amount determined by the court after considering:*

(i) *the average amount of the expenses incurred by, and restitution ordered to, individuals in other similar cases involving a conviction for an offense under Section 43.26, Penal Code; and*

(ii) *other factors the court considers appropriate.* [FA2]

SECTION 1. Article 42.037, Code of Criminal Procedure, is amended by adding Subsection (r) to read as follows:

(r) The court **may** order a defendant convicted of an offense under Section 43.26, Penal Code, to make restitution to an individual who as a child younger than 18 years of age was depicted in the visual material, in an amount equal to the expenses incurred by the individual as a result of the offense, including:

(1) medical services relating to physical, psychiatric, or psychological care;

(2) physical and occupational therapy or rehabilitation;

(3) necessary transportation, temporary housing, and child care expenses;

(4) lost income; and

(5) attorney's fees.

SECTION 1. Sections 43.26(d) and (g), Penal Code, are amended to read as follows:

(d) An offense under Subsection (a) is a felony of the *second* ~~*third*~~ degree, except that the offense is

SECTION 1. Sections 43.26(d) and (g), Penal Code, are amended to read as follows:

(d) An offense under Subsection (a) is a felony of the *third* degree, except that the offense is:

SECTION 2. Same as Senate version.

House Bill 2291
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted *one* or more times of an offense under that subsection.

(g) An offense under Subsection (e) is a felony of the *first* ~~[second]~~ degree.

SECTION 2. Section 508.145, Government Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) An inmate serving a sentence for an offense under Section 43.26, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the inmate's sentence.

No equivalent provision.

No equivalent provision.

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense

(1) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under that subsection; and

(2) a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under that subsection. [FA1(1)]

(g) An offense under Subsection (e) is a felony of the *second* degree, *except that the offense is a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subsection.* [FA1(2)]

SECTION 2. Section 508.145, Government Code, is amended by adding Subsection (e-1) to read as follows: [Deleted by FA1(3)]

SECTION __. Article 56.54(b), Code of Criminal Procedure, is amended. [FA2]

SECTION __. Subchapter B, Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.55. [FA2]

SECTION 3. Same as House version.

Same as Senate version.

Same as House version.

Same as House version.

SECTION 3. Same as House version.

House Bill 2291
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 4. Same as House version.

SECTION 4. Same as House version.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 30, 2015

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2291 by Parker (Relating to the payment of restitution to certain individuals depicted in child pornography and to increasing the punishment for certain individuals convicted of the offense of possession or promotion of child pornography.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Penal Code to allow state courts to order restitution for certain expenses to certain victims of child pornography and enhance the punishment for offenses related to the possession or promotion of child pornography.

This analysis assumes implementing the provisions of the bill would not result in a significant fiscal impact on state correctional agencies.

The bill would take effect September 1, 2015.

Local Government Impact

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

Source Agencies:

LBB Staff: UP, KJo, EP, TBo

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

84TH LEGISLATIVE REGULAR SESSION

May 30, 2015

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2291 by Parker (Relating to the payment of restitution to certain individuals depicted in child pornography and to increasing the punishment for certain individuals convicted of the offense of possession or promotion of child pornography.), **Conference Committee Report**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Penal Code to allow the punishment for possession of child pornography to be enhanced from a third to a second or a first degree felony for those with previous possession of child pornography convictions. The bill would also enhance the punishment for the promotion of child pornography from a second to a first degree felony.

A first degree felony is punishable by confinement in prison for life or five to 99 years, a second degree felony for two to 20 years, and a third degree felony for two to ten years. In addition to confinement certain felony level offenses are subject to an optional fine not to exceed \$10,000.

Enhancing the penalty for any criminal offense and increasing the amount of time an offender must serve before becoming eligible for parole is expected to result in increased demands upon the correctional resources of counties or of the state due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. In fiscal year 2014, 253 people were arrested, 55 were placed under felony community supervision, and 97 were admitted into state correctional institutions for possession of child pornography. In fiscal year 2014, 54 people were arrested, fewer than ten were placed under felony community supervision, and fewer than ten were admitted into state correctional institutions for promotion of child pornography. This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional populations, programs, or workloads.

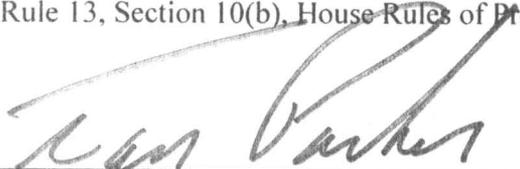
Source Agencies:

LBB Staff: UP, LM, JPo

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order under Rule 13.

I certify that a copy of the conference committee report on HB 2291 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.


(name)

5/30/15
(date)