

**SUBJECT:** Enhancing penalties for prior possession, promotion of child pornography

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson  
0 nays

**WITNESSES:** For — (*Registered, but did not testify:* William Squires, Bexar County District Attorney; Mandi Kimball, Children at Risk; Katherine McAnally, Hill Country Children's Advocacy Center; Pamela McPeters, Texas Association for the Protection of Children, TexProtects; Jeffrey Knoll)

Against — None

**BACKGROUND:** Penal Code, secs. 43.26(d) and (g) provide that the criminal penalty for possession of child pornography is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) and the criminal penalty for promotion of child pornography is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000), regardless of whether the individual has prior convictions of these offenses.

Under federal law, 18 U.S. Code sec. 2252(b), there is a graduated penalty structure for individuals convicted of transporting, receiving, distributing, or selling or possessing with intent to sell child pornography in interstate or foreign commerce. The criminal penalty for a first conviction is a fine and imprisonment between five and 20 years, and the penalty for an individual with a prior conviction is a fine and imprisonment between 15 and 40 years.

**DIGEST:** HB 2291 would amend the Penal Code to increase the criminal penalty for possession of child pornography from a third-degree felony to a second-degree felony if the defendant had one prior conviction of the offense, and to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the defendant had two or more prior convictions of the offense.

The bill also would increase the criminal penalty for promoting or intending to promote child pornography from a second-degree felony to a first-degree felony if the defendant had a prior conviction of the offense.

This bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.