

**SUBJECT:** Enhancing punishment for theft and fraud crimes against the elderly

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Keel, Riddle, Ellis, Hodge, Pena, Talton

0 nays

3 absent — Denny, Dunnam, P. Moreno

**WITNESSES:** For — Michael Bernard, for District Attorney Susan Reed; Thomas C. Dephant, Greater San Antonio Crime Prevention Commission; Clifford C. Herberg, Bexar County District Attorney's Office

Against — None

**BACKGROUND:** Under Penal Code, sec. 31.03, the punishment for theft ranges from a Class C misdemeanor (maximum fine of \$500) 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), depending on the value and type of property stolen. An offense is increased to the next higher category if the prosecutor proves at trial that the actor was a public servant at the time of the offense and that the property came into the person's custody by virtue of his or her status as a public servant, or that the actor was in a contractual relationship with government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of the contractual relationship.

Penal Code, sec. 32.45 establishes the offense of misapplication of fiduciary property or property of a financial institution. A person commits an offense by intentionally, knowingly, or recklessly misapplying property held as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner or to a person for whose benefit the property is held. Punishment ranges from a Class C misdemeanor to a first-degree felony, depending on the value of the property misapplied.

Under Penal Code, sec. 32.46, a person commits the offense of securing the execution of a document by deception if, with intent to defraud or harm any

person, he or she by deception causes another to sign or execute a document that affects property or service or any person's pecuniary interest. Punishment ranges from a Class C misdemeanor to a first-degree felony, depending on the value of the property, service, or pecuniary interest.

Penal Code, sec. 22.04 defines an elderly person as a person 65 years of age or older.

**DIGEST:**

CSHB 420 would increase the punishment for theft, misapplication of fiduciary property or property of a financial institution, and securing the execution of a document by deception to the next higher category of offense if it was shown at trial that the victim was an elderly person at the time of the offense.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 420 would give added protection against fraud and theft to the elderly, who are particularly vulnerable to such crimes. Increasing numbers of offenders prey on the elderly because they often die or fall ill before trial. Also, elderly people often do not press charges because they are embarrassed by the offense or afraid of losing their independence. A study by the American Association of Retired Persons found that certain fraud and theft crimes claim more elderly than younger victims. Senior citizens are the fastest growing segment of the population in the nation as well as in Texas. As a result, law enforcement agencies expect crimes against the elderly to become a greater priority as this portion of the population continues to grow. CSHB 420 would help deter would-be offenders from preying on the elderly.

Enhancing penalties for fraud and theft crimes against the elderly would help ensure that victims get their money back. Senior citizens are particularly concerned about restitution because they most are on fixed incomes or cannot work because of poor health or advanced age. Enhancing the penalty for these crimes would give prosecutors more leverage to negotiate plea agreements with offenders. Prosecutors could apply more pressure on offenders to pay back elderly victims as part of a plea agreement because of the threat of a longer prison sentence if the offender were convicted at trial.

CSHB 420 would make punishment for theft and fraud crimes against the elderly consistent with other sections of the Penal Code that already give elderly people added protection because of their vulnerability. Penal Code, sec. 22.04 imposes severe penalties for those who cause injury to a child or a disabled or elderly person. For example, it is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to knowingly or intentionally cause bodily injury to an elderly person, whereas assault against any other victim is a Class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Because elderly people are more likely to be victims of property crimes than of violent crimes, it is inconsistent to punish the latter more severely while doing nothing more to protect elderly victims of fraud and theft. Property crimes, like violent crimes, adversely affect the health of already fragile senior citizens because of the stress that they undergo as a result.

Concerns about the increasing costs of incarcerating offenders for longer sentences are misplaced. The bill's fiscal note projects no significant cost to the state.

**OPPONENTS  
SAY:**

CSHB 420 inappropriately would enhance penalties for nonviolent crimes at a time when Texas prisons are filled to capacity and the state faces a fiscal crisis. Taxpayers should not have to pay the higher costs of incarcerating nonviolent offenders for longer sentences.

This bill would create a special class of victims, contrary to the constitutional right to equal protection under the law. It would be unfair to provide special protection to the elderly but not to other groups that are hit hard by theft and fraud crimes, such as low-income families and young people with limited resources. Elderly people, who often have more resources than other segments of the population, may be better able to weather the storm when they fall victim to property crimes. While it makes sense to punish violent crimes against the elderly more severely because of their physical vulnerability, the Legislature should not extend the penalty enhancement to property crimes against the elderly.

**NOTES:**

As filed, HB 420 would have enhanced penalties only for theft against the elderly, not for misapplication of fiduciary property or securing the execution of a document by deception.

A similar bill, HB 492 by J. Jones, also is on today's House General State Calendar. It would amend Penal Code, sec. 22.04 to define an elderly person as a person 60 years of age or older and would enhance punishment for causing bodily injury to a child or an elderly or disabled person.

Two similar bills during the 77th Legislature, HB 60 by Clark, et al., and HB 1550 by A. Reyna, were referred to the House Criminal Jurisprudence Committee but never considered in a public hearing. Both bills would have enhanced penalties for theft committed against elderly people.