

SUBJECT: Barring employment at facilities serving the elderly and the disabled

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Rose, S. King, J. Davis, Eissler, Herrero, Hughes, Naishtat,
Parker

0 nays

1 absent — Pierson

SENATE VOTE: On final passage, March 15 — 30-0

WITNESSES: For — Beth Ferris, Texas Advocates for Nursing Home Residents; Gavin Gadberry, Texas Health Care Assoc; Carlos Higgins, Texas Silver-Haired Legislature; Dianne M. Long, Care for Elders and One Voice; (*Registered, but did not testify*: Torie Camp, Texas Assoc Against Sexual Assault; Lauren DeWitt, Citizens Commission on Human Rights; Janice Dykes, National Association of Social Workers/Texas Chapter; Aaryce Hayes, Advocacy Inc.; George Linial, Texas Assoc of Homes and Services for the Aging; Michelle Romero, Texas Medical Assoc; Lee Spiller, Citizens Commission on Human Rights; Heather Vasek, Texas Assoc for Home Care)

Against — (*Registered, but did not testify*: Benny Hernandez, American Civil Liberties Union)

BACKGROUND: Health and Safety Code, sec. 250.006(a) provides a list of criminal offenses for which conviction bars a person from being employed at facilities serving the elderly or people with disabilities. These offenses include:

- criminal homicide;
- kidnapping and unlawful restraint;
- indecency with a child;
- sexual assault;
- aggravated assault;
- injury to a child, elderly individual, or disabled individual;

- abandoning or endangering a child;
- aiding suicide;
- arson; and
- robbery.

Sec. 250.006(b) provides a list of criminal offenses that bar a person from employment that involves direct contact with a consumer in a facility before the fifth anniversary of the date the person was convicted. These include:

- assault that is punishable as a Class A misdemeanor or as a felony;
- burglary;
- theft;
- misapplication of fiduciary property or property of a financial institution that is punishable as a Class A misdemeanor or a felony;
- or
- securing execution of a document by deception that is punishable as a Class A misdemeanor or a felony.

Under the Health and Safety Code, a “facility” includes a nursing home, assisted-living facility, adult daycare facility, facility for the mentally retarded, adult foster care provider, a home and community services support agency, or a facility that provides mental health services.

DIGEST:

CSSB 199 would add the following criminal offenses to the list of offenses that would bar a person from being employed in a facility serving the elderly or people with disabilities:

- indecent exposure;
- improper relationship between educator and student;
- improper photography or visual recording;
- deadly conduct;
- aggravated sexual assault;
- terroristic threat;
- online solicitation of a minor;
- money laundering;
- Medicaid fraud;
- cruelty to animals; or
- a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing

elements that are substantially similar to the elements of an offense listed by this subsection.

The bill also would add false identification as a peace officer or disorderly conduct to the crimes after which five years must pass from the date of conviction in order for the person to be employed in a facility and have direct contact with consumers in the facility.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSSB 199 would provide further protections for vulnerable people. Current law does not require that people who commit certain serious and sometimes violent crimes be prevented from employment at a facility that cares for the elderly or disabled. These facilities care for the most vulnerable in our society, and Texas should ensure that criminals are not able to work in close contact with these citizens. Home care workers working with home and community service support agencies provide direct care to elderly and disabled people, including bathing, feeding, and other intimate tasks. These positions often are high-stress and require coping mechanisms that people convicted of criminal offenses have shown they do not have. Families should feel safe having their loved ones cared for in a facility or home-care situation, and excluding certain convicted criminals from being employed as caregivers is one step in providing that assurance.

**OPPONENTS
SAY:**

CSSB 199 is overly broad and would inhibit a broad range of rehabilitated offenders from re-entering the workforce and leading productive lives. Barring these persons from working at these facilities during their entire lifetime would hamper needlessly their ability to move forward with their lives and make a living. For example, “deadly conduct” sometimes is used as an alternative pleading for DUI, and barring a person with a first-time DUI offense from ever working at a facility seems overly harsh. In addition, a lifetime exclusion for a person convicted of money laundering seems unnecessary as money laundering has not generally been considered to be part of the profile of an abuser.

NOTES:

The committee substitute differs from the Senate engrossed version by moving two offenses – false identification as a peace officer and disorderly conduct – from the list barring employment in a facility (subsection (a)) to the list barring employment in a facility and having direct contact with a consumer in that facility until five years after the

date of conviction (subsection (b)).