

SUBJECT: Creating offense for abandoning or endangering elderly or disabled person

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Keel, Riddle, Ellis, Hodge, Talton

0 nays

4 absent — Denny, Dunnam, P. Moreno, Pena

WITNESSES: No public hearing

BACKGROUND: Under Penal Code, sec. 22.041, a person commits a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) if, having custody, care, or control of a child younger than 15, the person intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm, if the actor abandoned the child with intent to return for the child. It is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the actor abandoned the child without intent to return for the child. It is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the actor abandoned the child under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.

It is a state-jail felony to engage in conduct intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, that places a child younger than 15 in imminent danger of death, bodily injury, or physical or mental impairment.

Abandon means to leave a child in any place without providing reasonable and necessary care, under circumstances in which no reasonable, similarly situated adult would leave a child of that age and ability.

Penal Code, sec. 22.04 defines an elderly person as a person at least 65 years old and a disabled person as a person older than 14 who, by reason of age or physical or mental disease, defect, or injury, is substantially unable to protect

himself from harm or to provide food, shelter, or medical care for himself.
Child means a person 14 years of age or younger.

Health and Safety Code, ch. 241 governs the licensing of hospitals.

DIGEST:

The author plans to offer a floor substitute for CSHB 1426, which is reflected in the following analysis.

The floor substitute for CSHB 1426 would make it a state-jail felony if, having custody, care, or control of an elderly or disabled person, a person intentionally abandoned such a person in any place under circumstances that would expose the elderly or disabled person to an unreasonable risk of harm, if the actor abandoned the person with intent to return. It would be a third-degree felony if the actor abandoned the elderly or disabled person without intent to return, and a second-degree felony if the actor abandoned the disabled or elderly person in circumstances that a reasonable person would believe would place the person in imminent danger of death, bodily injury, or physical or mental impairment.

It would be a state-jail felony to engage in conduct intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, that placed an elderly or disabled person in imminent danger of death, bodily injury, or physical or mental impairment.

It would be a second-degree felony if a person with custody, care, or control of a resident of a health-care facility licensed under a law other than Health and Safety Code, ch. 241, who was a child younger than 15 or an elderly or disabled person:

- intentionally or knowingly failed to provide food, medical care, or shelter for the person, and
- the person's conduct caused the child or elderly or disabled person to suffer serious bodily injury or serious mental deficiency, impairment, or injury.

The floor substitute would make it a defense to prosecution under the provision mentioned above that the actor voluntarily delivered a child to a designated emergency infant-care provider.

It would be an exception to the application of the above provision that the person was a health-care facility licensed under a law other than Health and Safety Code, ch. 241, or a licensed health-care professional providing medical treatment at such a facility, or an employee of such a facility, and that the person's conduct was the result of:

- a decision made to withhold or withdraw life-sustaining treatment from a qualified terminal or irreversible patient;
- power of attorney;
- consent to medical treatment of a minor;
- consent for emergency care;
- a hospital patient transfer; or
- a decision made by a patient's legal guardian who had the authority to make a decision regarding the patient's medical treatment.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

The floor substitute for CSHB 1426 would give elderly and disabled people the same protection against neglect and abuse as the law now affords children. These groups are equally vulnerable and dependent on others for their livelihood, and it makes sense to treat them similarly when they are victims of abuse and neglect. For example, Penal Code, sec. 22.04 punishes perpetrators equally for causing serious bodily injury, serious mental injury, or bodily injury to any of the three protected groups.

The bill would create an offense for failing to provide food, medical care, or shelter for a member of these vulnerable groups at a health-care facility. This would assist with prosecution of abuses that occur in nursing homes, among other facilities. The stiff penalties attached would deter would-be offenders from neglecting children or disabled or elderly people.

The floor substitute specifically would target neglect that occurs at health-care facilities, while the current statute governing injury to a child or an elderly or disabled person applies to anyone with a legal or statutory duty to act, or to any actor who has assumed care, custody, or control of a protected person. The existence of criminal provisions dealing specifically with health-care facilities would make it more clear-cut to prosecute such crimes. Current law requires the state to prove a duty to act, whereas the floor substitute simply

would require the state to prove that the offender had custody, care, or control of a resident of a health-care facility, where the duty to care for a resident is implicit.

The bill would contain sufficient safeguards for health-care providers and for hospitals, which would be exempt from prosecution for failure to provide food, medical care, or shelter to a member of these protected groups. A hospital legitimately can refuse treatment for someone who is not insured and seeks nonemergency care. Other licensed health-care facilities would be exempt from prosecution if they had legal authority for certain medical treatment as a result of a decision to withhold life-sustaining treatment or a decision made by a patient's legal guardian, among others.

No religious belief should negate the duty of a health-care facility to provide food and shelter to a child or a disabled or elderly person, and health-care providers should not escape prosecution by claiming a religious exemption. The floor substitute would provide sufficient exceptions to protect facilities that acted on the basis of guardians' decisions about medical treatment, which could be based on religious beliefs or other factors.

**OPPONENTS
SAY:**

This bill is unnecessary. An omission by a person with a duty to act that results in serious bodily injury, bodily injury, or serious mental deficiency to a child or a disabled or elderly person can be prosecuted under Penal Code, sec. 22.04. Furthermore, that section makes it a first-degree felony (punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the conduct is committed intentionally or knowingly, which is higher than the penalties under the floor substitute. The floor substitute would create confusion by providing different penalties for similar conduct.

The bill would not create a defense to prosecution for failing to act or for abandoning people based on treatment in accordance with a recognized method of religious healing that has a generally accepted record of efficacy. Thus, Christian Scientists or others whose religious beliefs dictated a certain form of treatment could be subjected to criminal charges inappropriately.

NOTES:

As filed, HB 1426 would have made it an offense for anyone with custody, care, or control of a child or an elderly or disabled person intentionally or knowingly to fail to provide food, medical care, or shelter. The offense would

not have been limited to situations that resulted in serious bodily injury or serious mental impairment. The original bill also would not have exempted hospitals from prosecution and would not have contained exceptions for health-care facilities that acted as a result of a power of attorney, consent to medical treatment of a minor, or other forms of legal authorization.

The companion bill, SB 827 by Whitmire, passed the Senate by voice vote on April 16 and was scheduled for a public hearing by the House Criminal Jurisprudence Committee on May 6.

A related bill, HB 492 by J. Jones, scheduled for House floor consideration on May 8, would define an elderly person as a person at least 60 years old for the purpose of enhancing punishments for causing bodily injury to a child or an elderly or disabled person.