

SUBJECT: Enhancing punishment for injury to a child or elderly or disabled person

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, P. Moreno, Pena, Talton

0 nays

WITNESSES: For — Bruce P. Bower, Texas Senior Advocacy Coalition; Constance Smith, Dallas County Elder Abuse Coalition

Against — None

BACKGROUND: Penal Code, sec. 22.04 establishes the crime of injury to a child or elderly or disabled person. It defines elderly as 65 years of age or older.

It is 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) to intentionally or knowingly, by act or omission, cause seriously bodily injury or serious mental deficiency, impairment, or injury to a child or an elderly or disabled person. It is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the conduct was engaged in recklessly. Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

It is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to intentionally or knowingly, by act or omission, cause bodily injury to a child or an elderly or disabled person. It is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the conduct was engaged in recklessly. Bodily injury means physical pain, illness, or any impairment of physical condition.

It is a state-jail felony if a person acts with criminal negligence to cause serious bodily injury, serious mental deficiency, or bodily injury to a child or an elderly or disabled person.

An omission that causes serious bodily injury, serious mental deficiency, or bodily injury is an offense if the actor has a legal or statutory duty to act for or has assumed care, custody, or control of a child or an elderly or disabled person. The actor has assumed care, custody, or control if he or she has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that the actor has accepted responsibility for protection, food, shelter, and medical care for a child or an elderly or disabled person. A person must act intentionally, knowingly, or recklessly for an omission to constitute a crime; criminal negligence is not sufficient.

DIGEST:

HB 492 would 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 from a third-degree to a second-degree felony if the conduct was engaged in intentionally or knowingly, and from a state-jail felony to a third-degree felony if the conduct was engaged in recklessly.

The bill would enhance punishment from a state-jail felony to a third-degree felony if a person acted with criminal negligence to cause serious bodily injury, serious mental deficiency, or bodily injury to a child or an elderly or disabled person.

HB 492 would specify that an actor, including an employee of a nursing facility, an assisted living facility, or an intermediate care facility for the mentally retarded, licensed under the Health and Safety Code, has assumed care, custody, or control under the circumstance described above.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 492 appropriately would lower from 65 to 60 the age at which a person is considered elderly, to prevent victims from falling through the cracks in cases involving injury to the elderly. Setting the age at 60 would be consistent with federal law, as the National Older Americans Act defines elderly as aged 60 or older. According to the Dallas County Elder Abuse Coalition, about 19 other states use age 60 for elder-abuse laws. Also, the Texas statute that reduces fees for a senior citizen seeking a concealed handgun license applies to people age 60 or older. A 60-year-old person is equally as vulnerable as a 65-year-old and deserves the same protections against abuse.

HB 492 appropriately would enhance the penalties against people who cause bodily injury to a child or an elderly or disabled person, and against people who act with criminal negligence to harm people in these vulnerable groups. Under current law, people who harm the elderly receive minimal punishment, including misdemeanor reductions in many cases. Elderly people in multi-generational households particularly suffer, because many substance abusers return to live with them to take advantage of their income, which includes social security checks. Often, the elderly are harmed if they refuse to hand over the money. HB 492 would deter would-be offenders by stiffening the penalties for these kinds of serious abuses.

HB 492 would assist in the prosecution of crimes committed against the elderly at nursing homes by clarifying that nursing-home employees fall within the list of actors who may be prosecuted for a failure to act when it results in injury to the elderly.

**OPPONENTS
SAY:**

It would be inappropriate to lower the age from 65 to 60 in defining an elderly person. The line should be drawn at 65, the age that society generally associates with being a senior citizen. For example, retirement and other benefits, such as shopping discounts, traditionally apply at the age of 65. The crime of injury to a child or an elderly or disabled person is meant to protect victims who are most vulnerable to abuse. With people living longer and health-care treatment improving, it would be a step in the wrong direction to “define down” the age of an elderly person.

Enhancing punishments for injury to a child or an elderly or disabled person would be extreme and unnecessary. Current law contains sufficient felony penalties for these crimes. If prosecutors are reducing them to misdemeanors, they need to be educated better about the harmful nature of these offenses. HB 492 would make it a third-degree felony for a person to act with criminal negligence to cause bodily injury, serious bodily injury, or serious mental deficiency to one of the protected groups, and it would stiffen penalties for causing bodily injury. These provisions are overly harsh and would be inconsistent with other sections of the Penal Code. For example, criminally negligent homicide is only a state-jail felony, and assaulting any other person is only a Class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Punishing similar crimes so differently based solely on the identity of the victim would be inappropriate.

NOTES:

During the 77th Legislature, an identical bill, HB 2222 by J. Jones, passed the House late in the session and was referred to the Senate Criminal Justice Committee, where it died. The 77th Legislature enacted SB 328 by Jackson, extending to 10 years the statute of limitations for injury to a child or an elderly or disabled person punishable as a first-degree felony.