

BILL ANALYSIS

C.S.H.B. 3301
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties suggest that there is a benefit to revising certain sentencing provisions for the offense of injury to a child, elderly individual, or disabled individual. C.S.H.B. 3301 seeks to make such revision.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3301 amends the Penal Code to expand the conduct constituting the offense of injury to a child, elderly individual, or disabled individual for which the imposition of a sentence for a conviction arising out of the same criminal episode may run concurrently or consecutively to include any offense of injury to a child, elderly individual, or disabled individual or any offense for which a plea agreement was reached in a case in which the accused was charged with more than one such offense by removing language limiting the application of such sentencing related to the offense of injury to a child, elderly individual, or disabled individual to certain conduct under certain conditions.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3301 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 22.04, Penal Code, is amended by amending Subsection (f) and adding Subsection (f-1) to read as follows:
(f) Except as provided by Subsection (f-1),

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

an [An] offense under Subsection (a)(3) or (a-1)(3) is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or facility whose employment involved providing direct care for the victim. When the conduct is engaged in recklessly, the offense is a state jail felony.

(f-1) An offense under Subsection (a)(3) or (a-1)(3) is a felony of the first degree if:

(1) the conduct was committed intentionally or knowingly; and

(2) either:

(A) the victim of the offense was younger than six years of age at the time the offense is committed; or

(B) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section or Section 22.042.

SECTION 2. Chapter 22, Penal Code, is amended by adding Section 22.042 to read as follows:

Sec. 22.042. CONTINUOUS INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) A person commits an offense if, during a period that is 30 or more days but less than five years in duration, the person engages two or more times in conduct that constitutes an offense under Section 22.04 against one or more victims.

(b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 22.04 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 30 or more days but less than five years in duration, engaged in conduct that constituted an offense under Section 22.04.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim

No equivalent provision.

of an offense under Section 22.04, a defendant may not be convicted of the offense under Section 22.04 in the same criminal action as the offense under Subsection (a), unless the offense under Section 22.04:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 22.04 is alleged to have been committed against the same victim.

(e) An offense under this section is a felony of the first degree, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 15 years if:

(1) the conduct constituting at least one of the offenses under Section 22.04 caused serious bodily injury or serious mental deficiency, impairment, or injury to the victim; or

(2) the actor used or exhibited a deadly weapon during the commission of at least one of the offenses under Section 22.04.

No equivalent provision.

SECTION 1. Section 3.03(b), Penal Code, is amended to read as follows:

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense:

(A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(2) an offense:

(A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;

(3) an offense:

(A) under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(4) an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure;

(5) an offense:

(A) under Section 20A.02 or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections; or

(6) an offense[:

~~[(A)] under Section 22.04 [22.04(a)(1) or (2) or Section 22.04(a-1)(1) or (2) that is punishable as a felony of the first degree, regardless of whether the accused is~~

~~convicted of violations of the same section more than once or is convicted of violations of more than one section;] or an offense [(B)] for which a plea agreement was reached in a case in which the accused was charged with more than one offense under Section 22.04 [listed in Paragraph (A) and punishable as described by that paragraph, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section].~~

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 2. Same as introduced version.

SECTION 4. This Act takes effect September 1, 2017.

SECTION 3. Same as introduced version.