

- SUBJECT:** Penalty enhancement for certain fraud offenses against the elderly
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Vaught, Vo
- 0 nays
- 2 absent — Hodge, Riddle
- WITNESSES:** For — Katrina Daniels, Bexar County District Attorney Susan D. Reed; Carlos Higgins, Texas Silver-Haired Legislature; (*Registered, but did not testify*: John Chancellor, Texas Police Chiefs Association; Marc Chavez, Lubbock County District Attorney’s Office; James Jones, Houston Police Department; Kevin Petroff, Harris County District Attorney’s Office; Ballard C. Shapleigh, El Paso District Attorney Jaime Esparza; Rick Harrison)
- Against — (*Registered, but did not testify*: Samuel England, ACLU of Texas)
- BACKGROUND:** Penal Code, sec. 32.21 makes forgery a crime. Forgery is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) unless the forgery is on certain documents, including a check or credit card, in which case it is state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). Penal Code, sec. 32.31 makes the crime of credit or debit card abuse a state jail felony. Penal Code, sec. 32.51 makes the fraudulent use or possession of identifying information a state jail felony if the number of items possessed or used is less than five.
- There are three offenses in the Penal Code’s Chapter 32 covering fraud that increase the penalty to the next higher category of offense if committed against an elderly person: theft; securing execution of a document by deception; and misapplication of fiduciary property.
- DIGEST:** HB 2328 would allow the punishment for forgery, credit or debit card abuse, and fraudulent use or possession of identifying information to be

increased to the next higher category if the crimes were committed against an elderly person. (In most cases, the penalty would be enhanced from a state jail felony to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The bill would take effect September 1, 2008, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 2328 is needed to protect the elderly from the broad spectrum of elder fraud and to punish more appropriately those who commit these crimes. Currently, three types of fraud crimes carry enhanced penalties if committed against the elderly, including theft. However, three other common types of elder fraud — forgery, credit or debit card abuse, and fraudulent use or possession of identifying information — also should carry the enhancement. HB 2328 would remedy this giving by enhancing the penalty for these types of fraud when committed against the elderly.

Enhancing these crimes from state jail felonies to third degree felonies would mean that offenders could receive up to 10 years in prison if found guilty. This would punish more appropriately persons who prey on the elderly, and it would allow for a longer period in which to attempt to receive restitution. Since many elderly are on fixed budgets or have limited resources, receiving restitution in these cases can very important.

Elderly Texans deserve this extra protection because of the vulnerabilities that come with growing older, including in some cases being less able to recognize those trying to take advantage of them and to defend against them. In one example, an elderly woman's home care provider induced her into using a credit card to purchase \$20,000 worth of furniture for the care provider. The care provider claimed the property was a gift, so the theft statute did not apply, and the case could be prosecuted only as credit card abuse punishable as a state jail felony. The state has extended extra protection to the elderly for three crimes, and it only makes sense to extend this policy to other, similar elder-fraud offenses.

State correctional facilities currently are operating below capacity and would have the resources to handle any offenders whose penalties would be enhanced by HB 2328. The fiscal note on CSHB 2328 estimates no fiscal impact to the state, and the criminal justice impact statement assumes that the bill would not result in a significant impact on state corrections agencies.

OPPONENTS
SAY:

HB 2328 is unnecessary because all Texans already are protected by existing fraud laws. When the Penal Code was revised in 1993, the Legislature decided there should not be varied treatment of victims subject to similar harm. Victims should not be differentiated.

Texans cannot afford to enhance criminal penalties when existing punishments are adequate and state budgets are tight. The criminal justice system already faces a resource shortage, and incarcerating more offenders could strain the system further.