

SUBJECT: Third-degree felony for assault of emergency room personnel

COMMITTEE: Criminal Jurisprudence — favorable, as amended

VOTE: 7 ayes — Gallego, Hartnett, Burkett, Carter, Christian, Y. Davis, Zedler
0 nays
2 absent — Aliseda, Rodriguez

SENATE VOTE: On final passage, April 19 — 31- 0

WITNESSES: For — James Willmann, Texas Nurses Association, Texas Emergency Nurses Association; (*Registered, but did not testify:* Jennifer Banda, Texas Hospital Association; Ed Berger, Seton Family of Hospitals; Gretchen Birdwell, Texas Emergency Nurses Association; Gregg Knaupe, Seton Family of Hospitals)

Against — Gyl Switzer, Mental Health America of Texas

On — Sarah Kidder, Hogg Foundation for Mental Health

BACKGROUND: Penal Code, sec. 22.01 establishes the offense of assault. The offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Under five circumstances, the offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), including if committed against someone the defendant knows is emergency services personnel while the person is providing emergency services.

DIGEST: SB 295, as amended, would expand the circumstances under which assault could be a third-degree felony to include assault of a person the defendant knew was emergency room personnel while the person was providing emergency services. Emergency room personnel would be defined as a person in a hospital emergency department who, while working or volunteering, provided services for the public during emergency situations. It would be an exception to this enhancement if a person were a patient and the emergency room personnel had not received training in certain de-escalation and crisis intervention techniques to facilitate

interaction with patients, including patients with mental impairments. The training would have to meet minimum standards established by the Department of State Health Services.

The offense would be a class A misdemeanor if, at the time of the offense, the defendant was a person with mental illness or intellectual disabilities.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 295 is needed to better protect from assault persons who work in emergency rooms. Currently, assault of emergency services personnel is a third-degree felony, but an attack on an emergency room worker would be only a class A misdemeanor. Violent attacks on nurses and other emergency room workers have increased. In one recent survey, 25 percent of emergency room nurses surveyed reported experiencing physical violence more than 20 times in the last three years. Nurses and other emergency room staff deserve the same protections given to emergency services personnel providing emergency services.

Emergency room workers place themselves at risk as part of their routine work or volunteer duties and deserve the extra protection that SB 295 would give them. Raising the penalty for assault to a third-degree felony would have a deterrent effect on assaults and would recognize the special need for protection of all emergency room workers. The current enhanced penalty for assault on certain categories of individuals includes not only emergency services personnel but also public servants and security officers, and emergency room staff belong among these groups.

The bill would ensure that staff assaults by persons with mental impairments were handled appropriately. The offense would remain a class A misdemeanor if committed by persons with mental illness or intellectual disabilities.

The bill would encourage training of staff, but not mandate it, by creating an exception to the third-degree felony penalty if an assault was committed by a patient and the emergency room worker did not have training in de-escalation and crisis intervention.

The fiscal note estimates that there would be no significant fiscal implication to the state and that the number of persons convicted under the bill would not result in a significant impact on corrections agencies

OPPONENTS
SAY:

SB 295 is unnecessary because the existing laws on assault adequately punish all of these offenses, including those against emergency room staff. Emergency room workers should be protected by the same laws as others, and there should not be varied treatment of victims subject to similar harm. If an assault is serious, it could be charged as an aggravated assault.

Texas cannot afford to enhance criminal penalties when existing punishments are adequate. The criminal justice system already faces a resource shortage, and lengthening prison sentences could strain the system further.

NOTES:

The committee amendment to the bill would make assault against emergency room personnel a class A misdemeanor if at the time of the offense, the defendant was a person with mental illness or intellectual disabilities.