

SUBJECT: Continuous physical abuse of child, elderly or disabled individual

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth
1 absent — Hughes

WITNESSES: For — Jennifer Tharp, Comal County Criminal District Attorney; Rainey Webb, Tarrant County District Attorney's Office; Columba Wilson; (*Registered, but did not testify:* Teresa Clingman, Midland District Attorney's Office; Ballard C. Shapleigh, representing Jaime Esparza, 34th District Attorney, El Paso, Hudspeth, and Culberson counties; Randall Sims, 47th District Attorney Office; Steven Tays, Bexar County Criminal District Attorney's Office)

Against — (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association)

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Penal Code, sec. 22.04 makes it a crime to intentionally, knowingly, recklessly, or with criminal negligence by act or intentionally, knowingly, or recklessly by omission cause injury to a child, elderly individual, or disabled individual. Punishments vary from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) with the type of injury — serious bodily injury; serious mental deficiency, impairment, or injury; or bodily injury — and other circumstances.

Under Penal Code, sec. 22.02 aggravated assault is committed if a person assaults another and causes serious bodily injury or uses or exhibits a deadly weapon during the commission of the assault. Offenses are first-degree or second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000).

DIGEST:

Continuous physical abuse of a child, elderly individual, or disabled individual. CSHB 2979 would create a new criminal offense for the continuous physical abuse of a child, elderly individual, or disabled individual.

Physical abuse would be defined as acts that violate the statutes on aggravated assault or injury to a child, elderly individual, or disabled individual.

It would be a first-degree felony if:

- during a period of 30 or more days a person committed two or more acts of physical abuse, regardless of whether the acts of abuse were committed against one or more victims; and
- if at the time each act was committed, the person committing the act was 17 years old or older and the victim was a child, elderly individual, or disabled individual.

Offenses would be punished by a prison term of 25 to 99 years or life in prison.

In a jury trial, the jury would not be required to agree unanimously on which specific acts of physical abuse were committed by the defendant or the exact date they were committed. The jury would be required to agree unanimously that the person during a period of at least 30 days committed two or more acts of physical abuse.

A defendant could not be convicted in the same criminal action of an offense for aggravated assault or injury to a child, elderly individual, or disabled individual for the same conduct used to convict under the offense created by the bill, unless the other offense:

- was charged in the alternative;
- occurred outside the 30-day period of the alleged crime under the bill; or
- was considered by the judge or jury to be a lesser included offense of the offense created by the bill.

A defendant could not be charged with more than one count of the new offense if all the alleged conduct was alleged to have had a single victim.

Limits on parole. Persons convicted of the offense created in CSHB 2979 would be ineligible for release on parole until their actual time served, plus good conduct time, equaled the lesser of one-half of their sentence or 30 years.

Limits on probation. CSHB 2979 would add injury to a child, elderly individual, or disabled individual that involved serious mental deficiency, impairment, or injury to the list of offenses in Code of Criminal Procedure art. 42.12, sec. 3(g) that make persons convicted of the crimes ineligible to receive judge-ordered community supervision.

The bill would make injury to a child, elderly individual, or disabled individual that involved serious bodily injury and serious mental deficiency, impairment, or injury ineligible to receive jury-recommended probation.

The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 2979 is needed to protect the state's children, elderly individuals, and disabled individuals from offenders who commit physical abuse and to adequately punish those who do. The bill would accomplish this by creating a new offense for those who continuously harm the state's children, elderly individuals, and disabled individuals and by limiting the probation and parole of those who were convicted of the offense.

Continuous physical abuse of a child, elderly individual, or disabled individual. Currently, Texas has an offense for continuous sexual abuse of children, and the same protections should be afforded to the state's most vulnerable populations from physical abuse.

While Texas has strong laws against physical abuse and injury to children, elderly individuals, and disabled individuals, someone who commits multiple offenses would have to be tried for each individual offense. This results in the court focusing only on one event at a time and not at the overall picture of an abuser. Except in limited circumstances, prison terms from multiple offenses cannot not be stacked and are served at the same time. This can result in inadequate punishment.

CSHB 2979 would address this by creating a specific offense for repeated instances of aggravated assault and injury to children, elderly individuals,

and disabled individuals. Allowing several instances of physical abuse to be part of one offense would recognize the serious, continual nature of these violent offenses. The type of actions covered by the new offense would have to meet the high standards in the definition of serious bodily injury and serious mental injury. One broken bone or spanking would be nowhere near the threshold for this offense.

Provisions of the bill would be consistent with other similar offenses which involve continuous behavior over a period of time. Eliminating the requirement for unanimity of the jury relating to the specific conduct and the exact date it occurred is modeled after Jessica's law, dealing with continuous sexual abuse of children, which has proved successful. This provision has been upheld by the courts and would allow the conduct to be viewed as a whole. The jury still would have to unanimously agree that the person during the 30-day period committed at least two acts of abuse.

The 25-year minimum sentence for the crime would recognize the seriousness of the offense and the danger these offenders represent to the public, which could help to deter offenses.

Limits on parole. HB 2979 would ensure that offenders who commit this crime were not eligible for parole until they had served a significant portion of their sentence — a minimum of 30 years or one-half of their sentence. This would protect children, elderly individuals, and disabled individuals from violent offenders who have proved they will commit multiple offenses and ensure these offenders were adequately punished while allowing time for rehabilitation. These limits would be in line with those imposed for other similar, violent offenses.

Limits on probation. The bill would be a natural extension of current law which makes other serious offenses ineligible for judge- or jury-ordered probation. In these cases, probation would not reflect the seriousness of this crime given that there were multiple offenses against a child, elderly person, or disabled individual. These restrictions already are applied to numerous other offenses and do not negatively affect the ability to craft plea agreements in those situations. Prosecutors would retain discretion to handle these cases appropriately and would have options to use plea agreement when it was advisable.

OPPONENTS
SAY:

Continuous physical abuse of a child, elderly individual, or disabled individual. CSHB 2979 is unnecessary because current law already

harshly punishes these actions. Aggravated assault is a second-degree felony, and injury to a child, elderly person, or disabled individual is punishable from a state-jail felony to first-degree felony. These offenses can carry long prison terms.

The continuous sexual assault of a child offense was designed to punish the most heinous acts and as part of that instated a minimum 25-year sentence. Although all incidents of injury to a child, elderly person, or disabled person are serious, the punishment for these crimes should not be handled the same way as those punished under Jessica's law. This is especially the case because injury to a child, elderly person, or disabled individual includes a wide range of both acts and omissions.

Eliminating the requirement for jury unanimity when deciding on the specific conduct that constituted an offense and the exact date it occurred could be unfair to defendants and would make it difficult to defend against accusations.

Limits on parole. CSHB 2979 would result in delays in these offenders being considered for parole, and in some cases this may be inappropriate. Parole eligibility does not ensure release, and the board should be able to consider parole for offenders who commit this crime under the standard timelines.

Limits on probation. Including all injury to a child, elderly person and disabled individual offenses on the "3g" list would reduce the options available to judges and curtail their ability to handle each case individually to ensure that justice is served. As the list of "3g" offenses grows, some of the distinctions in the seriousness of different crimes blurs. Removing probation as an option could make it difficult to reach an agreement for a guilty plea in these cases if prosecutors thought a plea agreement was advisable.