

SUBJECT: Expanding definition of disabled person for crime of injury to such person

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson
0 nays

WITNESSES: For — Amy Connor, Autism Society of Central Texas; Dennis Borel, Coalition of Texans with Disabilities; Shane Haggerty; Stacy Woodruff; (*Registered, but did not testify*: Ann Hettinger, Concerned Women for America of Texas; Cate Graziani, Mental Health America of Texas)

Against — None

On — Belinda Carlton, Texas Council on Developmental Disabilities; (*Registered, but did not testify*: Michael Lesko, Texas Department of Public Safety; Shannon Edmonds, Texas District and County Attorneys Assn.)

BACKGROUND: Penal Code, sec. 22.04 governs the offense of injury to a child, elderly individual, or disabled individual. Under this law, a “disabled individual” is a person older than age 14 who is substantially unable to protect himself or to provide food, shelter, or medical care for himself due to age or a physical or mental disease, defect, or injury.

DIGEST: HB 1286 would expand the definition of disabled individual in Penal Code, sec. 22.04, which governs the offense of injury to a child, elderly individual, or disabled individual.

Under the bill, “disabled individual” would include a person of any age who was unable to protect or provide for the person’s self due to age or a physical or mental disease, defect, or injury. The bill further would define disabled individual to mean a person with one or more of the following conditions:

- autism spectrum disorder;
- developmental disability;
- intellectual disability;
- severe emotional disturbance; or
- traumatic brain injury.

HB 1286 would specify the inclusion of nondisabled and disabled child victims under the section that currently allows for an affirmative defense to prosecution if the actor was not more than three years older than the victim and the victim was a child at the time of the offense.

The bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 1286 would help ensure the proper punishment of those who choose to harm disabled individuals. Expanding the definition of a disabled individual and including victims younger than 14 years old would ensure the protection of children with certain disabilities who are among the most vulnerable members of society.

The definition of a disabled individual under current law is limited and does not sufficiently protect disabled victims younger than 14. The definition under HB 1286 would include people of all ages and those with certain conditions who might otherwise not be covered under current law. For example, some individuals with diagnosed autism may not be protected because the autism spectrum is broad enough to include people who are disabled but remain able to provide food, shelter, or medical care for themselves. HB 1286 would clarify that these individuals, including children with autism who are younger than 14, were protected under the law.

HB 1286 would not add a new crime but would give prosecutors options when trying cases in which the defendant was accused of injuring a disabled person who is also a child. Under current law, an individual accused of injuring a disabled person younger than 14 years old can be prosecuted for the crime of injuring a child but not for injuring a disabled

person. The bill would allow prosecutors to seek convictions in such cases under either part of Penal Code, sec. 22.04, which creates an offense for injuring a child as well as for injuring a disabled person. This would allow the conviction in such a case to more accurately reflect the crime committed.

OPPONENTS
SAY:

HB 1286 would make unnecessary changes to the current definition of disabled individuals that could end up limiting the group of disabled individuals protected by the statute. Removing the age restriction would have no practical effect because current law already protects from injury any child under the age of 14, whether disabled or not.

In addition, the bill would preserve outdated language that describes people with disabilities in current law while adding specific medical conditions to the definition of “disabled individual” that might not include all disabled individuals who should benefit from the law’s protection. For example, a person with a brain injury that did not meet the definition of “traumatic brain injury” might not be considered a disabled person under Penal Code, sec. 22.04 as amended by the bill.