

**SUBJECT:** Revising offense of injury to a child, elderly or disabled individual

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Vasut  
0 nays  
2 absent — A. Johnson, Murr

**SENATE VOTE:** On final passage, April 19 — 30-1 (Springer), on Local and Uncontested Calendar

**WITNESSES:** For — (*Registered, but did not testify:* Eric Carr, African American Police Officers League Texas PAC; DeAndre Hutchison, Afro American Police Officers League; Jennifer Tharp, Comal County Criminal District Attorney; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Ray Hunt, HPOU; Erleigh Wiley, Kaufman County Criminal District Attorney; Lindy Borchardt, for Sharen Wilson, Tarrant County Criminal District Attorney; Tom Maddox, Sheriffs Association; Mitch Landry, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Bruce Owdley)  
  
Against — None

**BACKGROUND:** Penal Code sec. 22.04 makes injury to a child, elderly individual, or disabled person a crime. Under sec. 22.04(a) it is an offense to intentionally, knowingly, recklessly, or with criminal negligence by act or intentionally, knowingly, or recklessly by omission, cause a child, elderly individual, or disabled individual serious bodily injury; serious mental deficiency, impairment, or injury; or bodily injury.  
  
Under sec. 22.04 (a-1), a person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, boarding home facility, intermediate care facility for

persons with an intellectual or developmental disability, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes a child, elderly individual, or disabled individual who is a resident of the home or facility serious bodily injury, serious mental deficiency, impairment, or injury, or bodily injury.

Under sec. 22.04(b), an omission is conduct constituting an offense under this section if an individual has a legal or statutory duty to act or had assumed care, custody, or control of a child, elderly individual, or disabled individual. Under sec. 22.04(d), an individual has assumed care, custody, or control if the individual has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual. An individual acting during the individual's capacity as owner, operator, or employee of a group home or facility is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

Depending on the circumstances and harm caused, offenses are first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000), second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000), or third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000),

**DIGEST:** SB 1354 would revise the conditions that define whether an individual can be considered to have assumed the care, custody, or control of a child, elderly individual, or disabled individual as it relates to committing the criminal offense of injury to such persons.

The provision that helps determine whether someone has assumed the care, custody, or control of someone would be revised so that it no longer required a reasonable person to believe that an individual had accepted responsibility for all four elements of protection, food, shelter, or medical care. The bill instead would establish that an individual had assumed care,

custody, or control of a child or elderly or disabled individual if a reasonable person would conclude that the person had accepted the responsibility for one of the elements of protection, food, shelter, or medical care.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

SB 1354 would better protect children, elderly individuals, and disabled individuals by clarifying when someone could be assumed to have the care, custody, and control of another. SB 354 could help prosecutors and law enforcement authorities address situations like one found in an unlicensed group home in Harris County in which more than 30 individuals with mental and physical disabilities were found in deplorable conditions that threatened their health and safety.

Current provisions could present a roadblock to protecting those who need it and to holding accountable those mistreating children, elderly, and disabled individuals because establishing that someone has assumed the care, custody, and control of someone requires having to prove someone has assumed all four elements of protection, food, shelter, and medical care. SB 354 would make it clear that providing any one of these elements would be enough to establish that someone had assumed the care, custody, and control of another. The bill would be in line with other Texas laws that protect the vulnerable from abuse and mistreatment.

**CRITICS  
SAY:**

Current law sufficiently covers situations in which children, elderly individuals, and disabled individuals are abused and injured. Individuals being abused in group homes would be covered by current law provisions that allow those responsible for abuse or injury in these homes to be subject to criminal prosecution.