

By: Whitmire

S.B. No. 20

A BILL TO BE ENTITLED

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AN ACT

relating to creating offenses for abandoning or endangering an elderly individual or disabled individual and for failing to provide certain care for a child, elderly individual, or disabled individual.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 22.041, Penal Code, is amended to read as follows:

Sec. 22.041. ABANDONING OR ENDANGERING A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Abandon" [~~,"abandon"~~] means to leave a child, elderly individual, or disabled individual in any place without providing reasonable and necessary care for the child, elderly individual, or disabled individual under circumstances under which no reasonable, similarly situated adult would leave an individual or [a] child of that age and ability.

(2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).

(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, an elderly individual, or a disabled individual, the person [~~he~~] intentionally abandons the child, elderly individual, or disabled individual in any place under circumstances that expose the child, elderly individual, or disabled individual to an unreasonable risk of harm.

1 (c) A person commits an offense if the person [~~he~~
2 intentionally, knowingly, recklessly[, ~~or with criminal~~
3 ~~negligence~~], by act or omission, engages in conduct that places a
4 child younger than 15 years, an elderly individual, or a disabled
5 individual in imminent danger of death, bodily injury, or physical
6 or mental impairment.

7 (c-1) A person commits an offense if, having custody, care,
8 or control of a child younger than 15 years, an elderly individual,
9 or a disabled individual, the person intentionally or knowingly
10 fails to provide food, medical care, or shelter for the child,
11 elderly individual, or disabled individual at a facility licensed
12 by the state, and as a direct consequence thereof, causes:

13 (1) serious bodily injury or death; or

14 (2) serious mental deficiency, impairment, or injury.

15 (d) Except as provided by Subsection (e), an offense under
16 Subsection (b) is:

17 (1) a state jail felony if the actor abandoned the
18 child, elderly individual, or disabled individual with intent to
19 return for the child, elderly individual, or disabled individual;
20 or

21 (2) a felony of the third degree if the actor abandoned
22 the child, elderly individual, or disabled individual without
23 intent to return for the child, elderly individual, or disabled
24 individual.

25 (e) An offense under Subsection (b) is a felony of the
26 second degree if the actor abandons the child, elderly individual,
27 or disabled individual under circumstances that a reasonable person

1 would believe would place the child, elderly individual, or
2 disabled individual in imminent danger of death, bodily injury, or
3 physical or mental impairment.

4 (f) An offense under Subsection (c) is a state jail felony.

5 (f-1) An offense under Subsection (c-1) is a felony of the
6 second degree.

7 (g) It is a defense to prosecution under Subsection (c) that
8 the act or omission enables the child to practice for or participate
9 in an organized athletic event and that appropriate safety
10 equipment and procedures are employed in the event.

11 (h) It is an exception to the application of Subsection (b)
12 [~~this section~~] that the actor voluntarily delivered the child to a
13 designated emergency infant care provider under Section 262.302,
14 Family Code.

15 (i) It is a defense to prosecution under Subsection (c) or
16 (c-1) that the actor voluntarily delivered the child to a
17 designated emergency infant care provider under Section 262.302,
18 Family Code.

19 (j) It is a defense to prosecution under Subsection (c-1)
20 that the person is a licensed health care facility or a licensed
21 health care professional providing medical treatment at, or is an
22 employee of, a health care facility and that the person's conduct is
23 the result of:

24 (1) a decision made under Subchapter B, Chapter 166,
25 Health and Safety Code, to withhold or withdraw life-sustaining
26 treatment from a qualified terminal or irreversible patient;

27 (2) a power of attorney executed in compliance with

1 Subchapter D, Chapter 166, Health and Safety Code, or under Chapter
2 XII, Probate Code;

3 (3) consent to medical treatment of a minor in
4 compliance with Chapter 32, Family Code;

5 (4) consent for emergency care received in compliance
6 with Chapter 773, Health and Safety Code;

7 (5) a hospital patient transfer made in compliance
8 with Chapter 773, Health and Safety Code;

9 (6) a decision made by a patient's legal guardian who
10 has the authority to make a decision regarding the patient's
11 medical treatment;

12 (7) a reasonable decision consistent with:

13 (A) a physician's orders, care, treatment, or
14 individual service plan with respect to the child, elderly
15 individual, or disabled individual;

16 (B) the diagnosis or medical condition of the
17 child, elderly individual, or disabled individual;

18 (C) the scope and nature of a health care
19 provider's license or certification; or

20 (D) an individual contract for services with the
21 health care provider, entered into by the child, elderly
22 individual, or disabled individual or a legal guardian with
23 authority to make health care decisions for the child, elderly
24 individual, or disabled individual; or

25 (8) a decision to discharge a child, elderly
26 individual, or disabled individual from a licensed health care
27 facility based on the absence of a legal or contractual obligation

1 on the part of the provider to provide such care or treatment.

2 (k) It is an affirmative defense to prosecution under
3 Subsection (c-1) for a failure to provide medical care that the
4 actor's conduct was based on treatment in accordance with the
5 tenets and practices of a recognized religious method of healing
6 that has a generally accepted record of efficacy.

7 SECTION 2. (a) This Act takes effect November 1, 2003.

8 (b) The changes in law made by this Act apply only to an
9 offense committed on or after the effective date of this Act. An
10 offense committed before the effective date of this Act is covered
11 by the law in effect when the offense was committed, and the former
12 law is continued in effect for that purpose. For purposes of this
13 subsection, an offense is committed before the effective date of
14 this Act if any element of the offense occurs before the effective
15 date.