

BILL ANALYSIS

Senate Research Center
81R10322 GCB-F

S.B. 1432
By: Nichols
Health & Human Services
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Exploitation is currently an offense of assault under Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Penal Code, rather than an offense of fraud. Section 32.46(d) (relating to the definition of "deception"), Penal Code, does not currently define deception to include electronic records. Chapter 32 (Fraud), Penal Code, does not include exploitation of children or minors as an offense of fraud.

As proposed, S.B. 1432 moves the offense of exploitation from Section 22.04, Penal Code, to Section 32.53, Penal Code. The bill also clarifies that electronic records are included in the definition of documents, which may be used as evidence. This bill also creates a new definition of "high managerial agent" in Section 35A.01 (Definitions), Penal Code, thereby allowing prosecutors to prosecute such persons for Medicaid fraud that is committed in a long-term care facility, and enhances penalties for offenders in this group.

The bill also amends the criminal Medicaid fraud statute to allow an offender to be prosecuted under this section or another section of the Penal Code, or both.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 242.002(4), Health and Safety Code, to redefine "department."

SECTION 2. Amends Sections 22.04(a-1), (b), (d), (f), and (g), Penal Code, as follows:

(a-1) Deletes existing text providing that a person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility exploitation.

(b) Makes a conforming change.

(d) Makes a conforming change.

(f) Makes a conforming change.

(g) Makes a conforming change.

SECTION 3. Amends Section 32.46(d), Penal Code, to define "document." Makes nonsubstantive changes.

SECTION 4. Amends Subchapter D, Chapter 32, Penal Code, by adding Section 32.53, as follows:

Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) Defines "child," "elderly individual," "disabled individual," and "exploitation."

(b) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly causes the exploitation of a child, elderly individual, or disabled individual.

(c) Provides that an offense under this section is a felony of the third degree.

(d) Provides that a person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Provides that Section 3.04 (Severance) does not apply to criminal episodes prosecuted under both this section and another section of this code. Requires that the sentences run concurrently if a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections.

SECTION 5. Amends Section 35A.01, Penal Code, by adding Subdivision (10), to define "high managerial agent."

SECTION 6. Amends Section 35A.02, Penal Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Authorizes the actor to be prosecuted under either this section or the other section or provision or both this section and the other section or provision if conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law.

(e) Provides that the punishment prescribed for an offense under this section is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor was a provider or high managerial agent at the time of the offense.

SECTION 7. Amends Section 71.02(a), Penal Code, to make conforming changes.

SECTION 8. Repealer: Section 22.04(c)(4) (relating to the definition of "exploitation"), Penal Code.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2009.