

By: Nichols

S.B. No. 1432

Substitute the following for S.B. No. 1432:

By: Rose

C.S.S.B. No. 1432

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the investigation, prosecution, and punishment of
3 criminal Medicaid fraud and certain other offenses related to
4 Medicaid fraud; providing penalties.

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

6 SECTION 1. Article 12.01, Code of Criminal Procedure, as
7 amended by Chapters 285 (H.B. 716), 593 (H.B. 8), 640 (H.B. 887),
8 and 841 (H.B. 959), Acts of the 80th Legislature, Regular Session,
9 2007, is reenacted and amended to read as follows:

10 Art. 12.01. FELONIES. Except as provided in Article 12.03,
11 felony indictments may be presented within these limits, and not
12 afterward:

13 (1) no limitation:

14 (A) murder and manslaughter;

15 (B) sexual assault under Section 22.011(a)(2),
16 Penal Code, or aggravated sexual assault under Section
17 22.021(a)(1)(B), Penal Code;

18 (C) sexual assault, if during the investigation
19 of the offense biological matter is collected and subjected to
20 forensic DNA testing and the testing results show that the matter
21 does not match the victim or any other person whose identity is
22 readily ascertained;

23 (D) continuous sexual abuse of young child or
24 children under Section 21.02, Penal Code;

1 (E) indecency with a child under Section 21.11,
2 Penal Code; or

3 (F) an offense involving leaving the scene of an
4 accident under Section 550.021, Transportation Code, if the
5 accident resulted in the death of a person;

6 (2) ten years from the date of the commission of the
7 offense:

8 (A) theft of any estate, real, personal or mixed,
9 by an executor, administrator, guardian or trustee, with intent to
10 defraud any creditor, heir, legatee, ward, distributee,
11 beneficiary or settlor of a trust interested in such estate;

12 (B) theft by a public servant of government
13 property over which he exercises control in his official capacity;

14 (C) forgery or the uttering, using or passing of
15 forged instruments;

16 (D) injury to an elderly or disabled individual
17 punishable as a felony of the first degree under Section 22.04,
18 Penal Code;

19 (E) sexual assault, except as provided by
20 Subdivision (1) [~~or (5)~~]; or

21 (F) arson;

22 (3) seven years from the date of the commission of the
23 offense:

24 (A) misapplication of fiduciary property or
25 property of a financial institution;

26 (B) securing execution of document by deception;

27 (C) a violation under Sections 162.403(22)-(39),

1 Tax Code;

2 (D) false statement to obtain property or credit

3 under Section 32.32, Penal Code;

4 (E) money laundering;

5 (F) [~~(D)~~] credit card or debit card abuse under

6 Section 32.31, Penal Code;

7 (G) [~~(F)~~] fraudulent use or possession of

8 identifying information under Section 32.51, Penal Code; or

9 (H) Medicaid fraud under Section 35A.02, Penal

10 Code;

11 (4) five years from the date of the commission of the

12 offense:

13 (A) theft or robbery;

14 (B) except as provided by Subdivision (5),

15 kidnapping or burglary;

16 (C) injury to an elderly or disabled individual

17 that is not punishable as a felony of the first degree under Section

18 22.04, Penal Code;

19 (D) abandoning or endangering a child; or

20 (E) insurance fraud;

21 (5) if the investigation of the offense shows that the

22 victim is younger than 17 years of age at the time the offense is

23 committed, 20 years from the 18th birthday of the victim of one of

24 the following offenses:

25 (A) sexual performance by a child under Section

26 43.25, Penal Code;

27 (B) aggravated kidnapping under Section

1 20.04(a)(4), Penal Code, if the defendant committed the offense
2 with the intent to violate or abuse the victim sexually; or

3 (C) burglary under Section 30.02, Penal Code, if
4 the offense is punishable under Subsection (d) of that section and
5 the defendant committed the offense with the intent to commit an
6 offense described by Subdivision (1)(B) or (D) of this article or
7 Paragraph (B) of this subdivision; ~~or~~

8 (6) ~~[(5)]~~ ten years from the 18th birthday of the
9 victim of the offense:

10 ~~[(A) indecency with a child under Section~~
11 ~~21.11(a)(1) or (2), Penal Code;~~

12 ~~[(B) except as provided by Subdivision (1),~~
13 ~~sexual assault under Section 22.011(a)(2), Penal Code, or~~
14 ~~aggravated sexual assault under Section 22.021(a)(1)(B), Penal~~
15 ~~Code; or~~

16 ~~[(C)]~~ injury to a child under Section 22.04,
17 Penal Code; or

18 (7) ~~[(6)]~~ three years from the date of the commission
19 of the offense: all other felonies.

20 SECTION 2. Subdivision (4), Section 242.002, Health and
21 Safety Code, is amended to read as follows:

22 (4) "Department" means the ~~[Texas]~~ Department of Aging
23 and Disability ~~[Human]~~ Services.

24 SECTION 3. Subsection (a), Section 250.006, Health and
25 Safety Code, is amended to read as follows:

26 (a) A person for whom the facility is entitled to obtain
27 criminal history record information may not be employed in a

1 facility if the person has been convicted of an offense listed in
2 this subsection:

3 (1) an offense under Chapter 19, Penal Code (criminal
4 homicide);

5 (2) an offense under Chapter 20, Penal Code
6 (kidnapping and unlawful restraint);

7 (3) an offense under Section 21.02, Penal Code
8 (continuous sexual abuse of young child or children), or Section
9 21.11, Penal Code (indecent with a child);

10 (4) an offense under Section 22.011, Penal Code
11 (sexual assault);

12 (5) an offense under Section 22.02, Penal Code
13 (aggravated assault);

14 (6) an offense under Section 22.04, Penal Code (injury
15 to a child, elderly individual, or disabled individual);

16 (7) an offense under Section 22.041, Penal Code
17 (abandoning or endangering child);

18 (8) an offense under Section 22.08, Penal Code (aiding
19 suicide);

20 (9) an offense under Section 25.031, Penal Code
21 (agreement to abduct from custody);

22 (10) an offense under Section 25.08, Penal Code (sale
23 or purchase of a child);

24 (11) an offense under Section 28.02, Penal Code
25 (arson);

26 (12) an offense under Section 29.02, Penal Code
27 (robbery);

- 1 (13) an offense under Section 29.03, Penal Code
2 (aggravated robbery);
- 3 (14) an offense under Section 21.08, Penal Code
4 (indecent exposure);
- 5 (15) an offense under Section 21.12, Penal Code
6 (improper relationship between educator and student);
- 7 (16) an offense under Section 21.15, Penal Code
8 (improper photography or visual recording);
- 9 (17) an offense under Section 22.05, Penal Code
10 (deadly conduct);
- 11 (18) an offense under Section 22.021, Penal Code
12 (aggravated sexual assault);
- 13 (19) an offense under Section 22.07, Penal Code
14 (terroristic threat);
- 15 (20) an offense under Section 32.53, Penal Code
16 (exploitation of child, elderly individual, or disabled
17 individual);
- 18 (21) an offense under Section 33.021, Penal Code
19 (online solicitation of a minor);
- 20 (22) [~~(21)~~] an offense under Section 34.02, Penal Code
21 (money laundering);
- 22 (23) [~~(22)~~] an offense under Section 35A.02, Penal
23 Code (Medicaid fraud);
- 24 (24) [~~(23)~~] an offense under Section 42.09, Penal Code
25 (cruelty to animals); or
- 26 (25) [~~(24)~~] a conviction under the laws of another
27 state, federal law, or the Uniform Code of Military Justice for an

1 offense containing elements that are substantially similar to the
2 elements of an offense listed by this subsection.

3 SECTION 4. Subsections (a-1), (b), (d), (f), and (g),
4 Section 22.04, Penal Code, are amended to read as follows:

5 (a-1) A person commits an offense if the person is an owner,
6 operator, or employee of a group home, nursing facility, assisted
7 living facility, intermediate care facility for persons with mental
8 retardation, or other institutional care facility and the person
9 intentionally, knowingly, recklessly, or with criminal negligence
10 by omission causes to a child, elderly individual, or disabled
11 individual who is a resident of that group home or facility:

- 12 (1) serious bodily injury;
13 (2) serious mental deficiency, impairment, or injury;
14 or
15 (3) bodily injury~~[, or~~
16 [~~(4) exploitation~~].

17 (b) An omission that causes a condition described by
18 Subsection (a)(1), (2), or (3) or (a-1)(1), (2), or (3)~~[, or (4)]~~ is
19 conduct constituting an offense under this section if:

- 20 (1) the actor has a legal or statutory duty to act; or
21 (2) the actor has assumed care, custody, or control of
22 a child, elderly individual, or disabled individual.

23 (d) For purposes of an omission that causes a condition
24 described by Subsection (a)(1), (2), or (3), the actor has assumed
25 care, custody, or control if he has by act, words, or course of
26 conduct acted so as to cause a reasonable person to conclude that he
27 has accepted responsibility for protection, food, shelter, and

1 medical care for a child, elderly individual, or disabled
2 individual. For purposes of an omission that causes a condition
3 described by Subsection (a-1)(1), (2), or (3), [~~or (4)~~], the actor
4 acting during the actor's capacity as owner, operator, or employee
5 of a group home or facility described by Subsection (a-1) is
6 considered to have accepted responsibility for protection, food,
7 shelter, and medical care for the child, elderly individual, or
8 disabled individual who is a resident of the group home or facility.

9 (f) An offense under Subsection (a)(3) or (a-1)(3) [~~or (4)~~]
10 is a felony of the third degree when the conduct is committed
11 intentionally or knowingly. When the conduct is engaged in
12 recklessly, the offense is a state jail felony.

13 (g) An offense under Subsection (a) is a state jail felony
14 when the person acts with criminal negligence. An offense under
15 Subsection (a-1) is a state jail felony when the person, with
16 criminal negligence and by omission, causes a condition described
17 by Subsection (a-1)(1), (2), or (3) [~~or (4)~~].

18 SECTION 5. Subsection (d), Section 32.46, Penal Code, is
19 amended to read as follows:

20 (d) In this section:

21 (1) "Deception" [~~,"deception"~~] has the meaning
22 assigned by Section 31.01.

23 (2) "Document" includes electronically stored data or
24 other information that is retrievable in a readable, perceivable
25 form.

26 SECTION 6. Subchapter D, Chapter 32, Penal Code, is amended
27 by adding Section 32.53 to read as follows:

1 Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR
2 DISABLED INDIVIDUAL. (a) In this section:

3 (1) "Child," "elderly individual," and "disabled
4 individual" have the meanings assigned by Section 22.04.

5 (2) "Exploitation" means the illegal or improper use
6 of an individual or of the resources of the individual for monetary
7 or personal benefit, profit, or gain.

8 (b) A person commits an offense if the person intentionally,
9 knowingly, or recklessly causes the exploitation of a child,
10 elderly individual, or disabled individual.

11 (c) An offense under this section is a felony of the third
12 degree.

13 (d) A person who is subject to prosecution under both this
14 section and another section of this code may be prosecuted under
15 either or both sections. Section 3.04 does not apply to criminal
16 episodes prosecuted under both this section and another section of
17 this code. If a criminal episode is prosecuted under both this
18 section and another section of this code and sentences are assessed
19 for convictions under both sections, the sentences shall run
20 concurrently.

21 SECTION 7. Section 35A.01, Penal Code, is amended by adding
22 Subdivision (10) to read as follows:

23 (10) "High managerial agent" means a director,
24 officer, or employee who is authorized to act on behalf of a
25 provider and has duties of such responsibility that the conduct of
26 the director, officer, or employee reasonably may be assumed to
27 represent the policy or intent of the provider.

1 SECTION 8. Section 35A.02, Penal Code, is amended by
2 amending Subsection (c) and adding Subsection (e) to read as
3 follows:

4 (c) If conduct constituting an offense under this section
5 also constitutes an offense under another section of this code or
6 another provision of law, the actor may be prosecuted under either
7 this section or the other section or provision or both this section
8 and the other section or provision.

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

14 SECTION 9. Subsection (a), Section 71.02, Penal Code, is
15 amended to read as follows:

16 (a) A person commits an offense if, with the intent to
17 establish, maintain, or participate in a combination or in the
18 profits of a combination or as a member of a criminal street gang,
19 he commits or conspires to commit one or more of the following:

20 (1) murder, capital murder, arson, aggravated
21 robbery, robbery, burglary, theft, aggravated kidnapping,
22 kidnapping, aggravated assault, aggravated sexual assault, sexual
23 assault, forgery, deadly conduct, assault punishable as a Class A
24 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
25 motor vehicle;

26 (2) any gambling offense punishable as a Class A
27 misdemeanor;

1 (3) promotion of prostitution, aggravated promotion
2 of prostitution, or compelling prostitution;

3 (4) unlawful manufacture, transportation, repair, or
4 sale of firearms or prohibited weapons;

5 (5) unlawful manufacture, delivery, dispensation, or
6 distribution of a controlled substance or dangerous drug, or
7 unlawful possession of a controlled substance or dangerous drug
8 through forgery, fraud, misrepresentation, or deception;

9 (6) any unlawful wholesale promotion or possession of
10 any obscene material or obscene device with the intent to wholesale
11 promote the same;

12 (7) any offense under Subchapter B, Chapter 43,
13 depicting or involving conduct by or directed toward a child
14 younger than 18 years of age;

15 (8) any felony offense under Chapter 32;

16 (9) any offense under Chapter 36;

17 (10) any offense under Chapter 34, ~~or~~ 35, or 35A;

18 (11) any offense under Section 37.11(a);

19 (12) any offense under Chapter 20A; or

20 (13) any offense under Section 37.10.

21 SECTION 10. Subdivision (4), Subsection (c), Section 22.04,
22 Penal Code, is repealed.

23 SECTION 11. The change in law made by this Act applies only
24 to an offense committed on or after the effective date of this Act.
25 An offense committed before the effective date of this Act is
26 covered by the law in effect when the offense was committed, and the
27 former law is continued in effect for that purpose. For purposes of

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1 this section, an offense was committed before the effective date of
2 this Act if any element of the offense occurred before that date.

3 SECTION 12. This Act takes effect September 1, 2009.