

## **BILL ANALYSIS**

C.S.H.B. 2979  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current state law authorizes a person accused of committing multiple assaults, and thus subject to prosecution under different Penal Code provisions, to be prosecuted under either set of provisions or both sets of provisions. Interested parties note that a person convicted of injury to a child or elderly or disabled individual may not serve any prison time or be placed on probation for the offense, which can result in additional harm to crime victims and victims' families. C.S.H.B. 2979 seeks to address this situation by revising provisions relating to the prosecution, punishment, supervision, and parole eligibility of offenders who injure children or elderly or disabled individuals.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2979 amends the Penal Code to create the first degree felony offense of continuous physical abuse of a child, elderly individual, or disabled individual for a person who is 17 years of age or older who commits during a period that is 30 or more days in duration two or more acts of physical abuse, defined by the bill as any act constituting aggravated assault or serious injury to a child, elderly individual, or disabled individual, against a child 14 years of age or younger, an elderly individual, or a disabled individual, regardless of whether the acts are committed against one or more victims. The bill makes the offense punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years. The bill expressly does not require members of the jury, if a jury is the trier of fact, to agree unanimously on which specific acts of physical abuse were committed by the defendant or the exact date when those acts were committed, but requires the jury to agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of physical abuse. The bill prohibits conviction of a defendant in the same criminal action of an aggravated assault offense or an offense involving serious injury to a child, elderly individual, or disabled individual if the victim of such an offense is the same victim as a victim of the alleged continuous physical abuse offense, unless the other offense is charged in the alternative, occurred outside the period in which the alleged continuous physical abuse offense was committed, or is considered by the trier of fact to be a lesser included offense of the alleged continuous physical abuse offense. The bill prohibits a defendant from being charged with more than one count of continuous physical abuse of a child, elderly individual, or disabled individual if all of the underlying acts of the alleged abuse are alleged to have been committed against a single victim.

C.S.H.B. 2979 amends the Government Code to make an inmate serving a sentence for continuous physical abuse of a child, elderly individual, or disabled individual ineligible for release on parole until the inmate's actual calendar time served plus good conduct time equals one-half of the sentence imposed or 30 years, whichever is less.

C.S.H.B. 2979 amends the Code of Criminal Procedure to include first degree felony injury to a child that results in serious mental deficiency, impairment, or injury, in addition to first degree felony injury to a child that results in serious bodily injury, among the offenses for which a judge is prohibited from ordering community supervision for a defendant and to include both of those offenses among the offenses for which a jury is prohibited from recommending community supervision for a defendant.

**EFFECTIVE DATE**

September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2979 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Title 1, Chapter 22, Penal Code, is amended to read as follows:

**No equivalent provision.**

Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

- (1) serious bodily injury;
- (2) serious mental deficiency, impairment, or injury; or
- (3) bodily injury.

(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, 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:

- (1) serious bodily injury;
- (2) serious mental deficiency, impairment, or injury; or
- (3) bodily injury.

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

- (1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

(c) In this section:

(1) "Child" means a person 14 years of age or younger.

(2) "Elderly individual" means a person 65 years of age or older.

(3) "Disabled individual" means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

(4) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 620, Sec. 11, eff. September 1, 2011.

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has

assumed care, custody, or control if he 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. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), or (3), the actor acting during the actor's capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) 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.

(e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a felony of the second degree.

(f) An offense under Subsection (a)(3) or (a-1)(3) is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or

facility whose employment involved providing direct care for the victim. When the conduct is engaged in recklessly, the offense is a state jail felony.

(g) An offense under Subsection (a) is a state jail felony when the person acts with criminal negligence. An offense under Subsection (a-1) is a state jail felony when the person, with criminal negligence and by omission, causes a condition described by Subsection (a-1)(1), (2), or (3).

(h) 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. This section does not apply to a person prosecuted under Penal Code Section 21.02, Section 21.07, or Section 21.11. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. 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, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); and

(2) notified in writing the parents or person other than himself acting in loco parentis to the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d);  
or

(3) notified in writing the Department of Protective and Regulatory Services that he would no longer provide any of the care set forth in Subsection (d).

(j) Written notification under Subsection (i)(2) or (i)(3) is not effective unless it contains the name and address of the actor, the name and address of the child, elderly individual, or disabled individual, the type of care provided by the actor, and the date the care was discontinued.

(k) It is a defense to prosecution under this section that the act or omission consisted of:

(1) reasonable medical care occurring under the direction of or by a licensed physician;  
or

(2) emergency medical care administered in

good faith and with reasonable care by a person not licensed in the healing arts.

(1) It is an affirmative defense to prosecution under this section:

(1) that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy;

(2) for a person charged with an act of omission causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident

of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect; or

(3) that:

(A) the actor was not more than three years older than the victim at the time of the offense; and

(B) the victim was a child at the time of the offense.

SECTION 2. Title 4, Subtitle G, Chapter 508, Government Code, is amended to read as follows:

Sec. 508.145. ELIGIBILITY FOR RELEASE ON PAROLE; COMPUTATION OF PAROLE ELIGIBILITY DATE. (a) An inmate under sentence of death, serving a sentence of life imprisonment without parole, serving a sentence for an offense under Section 21.02, Penal Code, or serving a sentence for an

SECTION 3. Section 508.145, Government Code, is amended by adding Subsection (e-1) to read as follows:

offense under Section 22.021, Penal Code, that is punishable under Subsection (f) of that section is not eligible for release on parole.

(b) An inmate serving a life sentence under Section 12.31(a)(1), Penal Code, for a capital felony is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 40 calendar years.

(c) An inmate serving a sentence under Section 12.42(c)(2), Penal Code, is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 35 calendar years.

(d)(1) An inmate serving a sentence for an offense described by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or (K), Article 42.12, Code of Criminal Procedure, or for an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article, or for an offense under Section 20A.03, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

(2) Notwithstanding Subdivision (1), an inmate serving a sentence for an offense described by Section 3g(a)(1)(E), Article 42.12, Code of Criminal Procedure, is not eligible for release on parole if the inmate is serving a sentence for an offense for which punishment was enhanced under Section 12.42(c)(4), Penal Code.

(d-1) Notwithstanding Subsection (d), for every 12 months that elapse between the date an arrest warrant is issued for the inmate following an indictment for the offense and the date the inmate is arrested for the offense, the earliest date on which an inmate is eligible for parole is delayed by three years from the date otherwise provided by Subsection (d), if the inmate is serving a sentence for an offense under Section 19.02, 22.011, or 22.021, Penal Code.

(e) An inmate serving a sentence for which the punishment is increased under Section 481.134, Health and Safety Code, is not eligible for release on parole until the inmate's actual calendar time served,

without consideration of good conduct time, equals five years or the term to which the inmate was sentenced, whichever is less.

(f) Except as provided by Section 508.146, any other inmate is eligible for release on parole when the inmate's actual calendar time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less.

(g) An inmate serving a sentence under Section 22.04, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served plus good conduct time equals one-half of the sentence imposed or 20 years, whichever is less.

No equivalent provision.

(e-1) An inmate serving a sentence under Section 22.03, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served plus good conduct time equals one-half of the sentence imposed or 30 years, whichever is less.

SECTION 1. Section 3g(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense under:

(A) Section 19.02, Penal Code (Murder);

(B) Section 19.03, Penal Code (Capital murder);

(C) Section 21.11(a)(1), Penal Code (Indecency with a child);

(D) Section 20.04, Penal Code (Aggravated kidnapping);

(E) Section 22.021, Penal Code (Aggravated sexual assault);

(F) Section 29.03, Penal Code (Aggravated robbery);

(G) Chapter 481, Health and Safety Code, for which punishment is increased under:

(i) Section 481.140, Health and Safety Code; or

(ii) Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections;

(H) Section 22.011, Penal Code (Sexual assault);

(I) Section 22.04(a)(1) or (2), Penal Code (Injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony of the first degree and the victim of the offense is a child;

(J) Section 43.25, Penal Code (Sexual performance by a child);

(K) Section 15.03, Penal Code, if the offense is punishable as a felony of the first

degree;

(L) Section 43.05, Penal Code (Compelling prostitution); or

(M) Section 20A.02, Penal Code (Trafficking of persons); or

(2) to a defendant when it is shown that a deadly weapon as defined in Section 1.07, Penal Code, was used or exhibited during the commission of a felony offense or during immediate flight therefrom, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. On an affirmative finding under this subdivision, the trial court shall enter the finding in the judgment of the court. On an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in its judgment.

No equivalent provision.

SECTION 2. Section 4(d), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(d) A defendant is not eligible for community supervision under this section if the defendant:

(1) is sentenced to a term of imprisonment that exceeds 10 years;

(2) is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Section 15(a);

(3) does not file a sworn motion under Subsection (e) of this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true;

(4) is convicted of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections;

(5) is convicted of an offense listed in Section 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(6) is convicted of an offense listed in Section 3g(a)(1)(D), if the victim of the offense was younger than 14 years of age at the time the offense was committed and the



actor committed the offense with the intent to violate or abuse the victim sexually;  
(7) is convicted of an offense listed in Section ~~3g(a)(1)(I) or (J)~~ [~~3g(a)(1)(I)~~]; or  
(8) is adjudged guilty of an offense under Section 19.02, Penal Code.

No equivalent provision.

SECTION 4. Chapter 22, Penal Code, is amended by adding Section 22.03 to read as follows:

Sec. 22.03. CONTINUOUS PHYSICAL ABUSE OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Act of physical abuse" means any act that violates Section 22.02 (aggravated assault) or Section 22.04(a)(1) or (2) (injury to a child, elderly individual, or disabled individual).

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

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of physical abuse, regardless of whether the acts of physical abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of physical abuse, the actor is 17 years of age or older and the victim of the act of physical abuse is a child, elderly individual, or disabled individual.

(c) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of physical abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of physical abuse.

(d) A defendant may not be convicted in the same criminal action of an offense under Section 22.02 or 22.04(a)(1) or (2) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense under Section 22.02 or 22.04(a)(1) or (2):

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).

(e) A defendant may not be charged with more than one count under Subsection (b) if all of the underlying acts of the alleged abuse are alleged to have been committed against a single victim.

(f) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

No equivalent provision.

SECTION 5. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 6. Same as introduced version.