

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.

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

(c-1) 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 intentionally or knowingly fails to provide food, medical care, or shelter for the child, elderly individual, or disabled individual.

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

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

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

(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child, elderly individual, or disabled individual under circumstances that a reasonable person would believe would place the child, elderly individual, or disabled individual in imminent danger of death, bodily injury, or physical or mental impairment.

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

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

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

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

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

(j) It is a defense to prosecution under Subsection (c-1) that the person is a health care facility licensed under a law other than Chapter 241, Health and Safety Code, or a licensed health care professional providing medical treatment at, or is an employee of, a health care facility licensed under a law other than Chapter 241, Health and Safety Code, and that the person's conduct is the result of:

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

(2) a power of attorney executed in compliance with Subchapter D, Chapter 166, Health and Safety Code, or under Chapter

1 XII, Probate Code;

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

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

6 (5) a hospital patient transfer made in compliance
7 with Subchapter B, Chapter 241, Health and Safety Code;

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

11 (7) a reasonable decision consistent with:

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

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

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

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

24 (8) a decision to discharge a child, elderly
25 individual, or disabled individual from a health care facility
26 licensed under a law other than Chapter 241, Health and Safety Code,
27 based on the child's, elderly individual's, or disabled

1 individual's inability to pay for care or treatment provided by the
2 health care facility.

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

8 SECTION 2. (a) This Act takes effect September 1, 2003.

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 827 passed the Senate on April 16, 2003, by a viva-voce vote; May 21, 2003, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 24, 2003, House granted request of the Senate; May 31, 2003, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 827 passed the House, with amendment, on May 10, 2003, by a non-record vote; May 24, 2003, House granted request of the Senate for appointment of Conference Committee; May 30, 2003, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor