

SUBJECT: State jail felony for repeated assault against family member

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Greenberg, Nixon, Pickett, Solis
0 nays
3 absent — Farrar, Hudson, Pitts

SENATE VOTE: On final passage, February 8 — voice vote

WITNESSES: No public hearing

BACKGROUND: It is a Class A misdemeanor (maximum penalty of one year in jail and a \$4,000 fine) to intentionally, knowingly or recklessly cause bodily injury to another, including the person's spouse.

DIGEST: SB 134 would make assault against a family member by a person who had previously been convicted at least twice of assault against a family member a state jail felony (punishable by 180 days to two years in state jail and an optional fine of up to \$10,000). SB 134 would take effect September 1, 1995.

SUPPORTERS SAY: SB 134 would restore a provision that existed before the 1993 Penal Code revisions making assault against a family member by someone who had at least two previous convictions a more serious offense than simple assault. The current penalties for a Class A misdemeanor and the enhanced misdemeanor penalties are not harsh enough to deter or adequately punish persons who repeatedly assault family members. Without the enhancements in SB 134 families of violent persons are endangered. The enhanced penalty was recommended to the 74th Legislature by the Senate Interim Committee on Domestic Violence.

Persons who assault family members often do it many times before law enforcement authorities are called, and a felony aggravated assault may occur only after numerous less injurious batterings. Persons who are convicted of repeatedly assaulting their spouses or children show a

disregard for the law and a continuing cycle of violence and should be subject to increased penalties. Spouses and other family members should not have to wait for abuse to escalate before a batterer is severely punished.

The enhancement to a state jail felony is appropriate: the offender is confined and has a record of a felony conviction but does not go to prison.

**OPPONENTS
SAY:**

It is unnecessary to enhance the penalty for assault against a family member. When the Penal Code was revised in 1993 the Legislature established broad categories of offenses, eliminated many special provisions and decided against varied treatment of victims subject to similar harm.

Enhancing a Class A misdemeanor to a state jail felony is too big an increase for causing bodily injury, a relatively low-level offense. Instead, prosecutors should use the general Penal Code provision for repeat and habitual misdemeanor offenders that allows persons convicted of a second Class A misdemeanor to be punished by a minimum of 90 days in jail. Penal Code provisions such as obstruction or retaliation could be used to impose a harsher penalty, or, if the injury was more serious, charges such as aggravated assault could be used.

SB 134 would be rarely used because in many domestic violence situations family members do not want to send other family members to jail. Instead, they want police to intervene in the immediate violence and then point the family toward help in averting future violence.