

SUBJECT: Providing higher penalties for protective orders

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

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

WITNESSES: No public hearing

BACKGROUND: The revised Penal Code enacted by the 73rd Legislature reduced the penalties for repeat violations of family violence protective orders. Under the old code violating a protective order was a Class A misdemeanor, with a maximum penalty of one year in jail and a \$4,000 fine. If an offender had violated protective orders at least twice previously, the offense became a third-degree felony, with a maximum penalty of 10 years in prison and a \$10,000 fine. The new code does not contain the enhanced penalty for repeat offenders.

DIGEST: SB 135 would make violation of a protective order a state jail felony, punishable by a maximum penalty of two years in state jail and a \$10,000 fine, if it shown at trial that the defendant had previously been convicted two or more times of violating a protective order. The act would take effect September 1, 1995.

SUPPORTERS SAY: SB 135 would restore a provision that existed before the 1993 Penal Code revisions and should be back in the law. Stiffer penalties for those who repeatedly violate court orders and abuse family members are completely justified. The current flat penalty strips courts of the authority to make a distinction between flagrant repeat offenders and others. The allowable penalties in such cases are currently too weak.

Without the enhancement proposed in SB 135, victims of domestic violence are endangered. The enhanced penalty was recommended to the 74th Legislature by the Senate Interim Committee on Domestic Violence.

Many victims, victims' advocates, prosecutors and law enforcement officials agree that the current Penal Code provisions are not tough enough for repeat violators of protective orders. By removing the enhancement provisions for defendants who have violated protective orders two or more times, Texas has created a more dangerous environment for victims of domestic violence. Cases in Texas show that some persons who repeatedly violated protective orders finally ended up killing or seriously harming their victims.

**OPPONENTS
SAY:**

It is unnecessary to enhance the penalty for assault against domestic violence victims. 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.

NOTES:

The Family Code requirements for the warning notice on protective orders still require a warning that violation of a protective order may be punished by up to 10 years in jail and a \$10,000 fine, which are third-degree felony penalties. HB 418 by Goodman, et al., which has passed both houses but was substantially amended in the Senate, would amend the warning to conform to the Class A misdemeanor maximum established by the 1993 Penal Code.