

- SUBJECT:** Assault against family, household member or in view of child
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Hinojosa, Dunnam, Garcia, Nixon, Smith, Talton
0 nays
3 absent — Green, Keel, Wise
- WITNESSES:** For — Bree Buchanan, Texas Council on Family Violence
Against — None
- BACKGROUND:** Penal Code sec. 22.01 makes it a state-jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000, if assault is committed against a family member and the defendant had been previously convicted of assault against a family member two or more times.
- DIGEST:** CSHB 1763 would amend the assault statute to make it a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000, if a person committed assault against a member of the person's family or household and had been previously convicted of such an assault. The current offense of a state jail felony for repeat assaultive offenses against family members would be repealed.
- It would be a state jail felony if a person committed assault in the presence of another member of the person's family or household who was younger than 17 years old.
- Persons would be considered to have been previously convicted of assault against a member of their family or household if they had been adjudged guilty or entered a plea of guilty or no contest in return for deferred adjudication, regardless of whether a sentence was imposed or probated and the defendant later discharged from probation.
- CSHB 1763 would take effect September 1, 1999, and would apply to offenses committed on or after that date.

SUPPORTERS
SAY:

CSHB 1763 would impose stiffer penalties on persons who repeatedly commit assault against family members because tougher laws are needed to help protect victims and appropriately punish offenders. Family violence is a serious problem in Texas, with the Department of Public Safety reporting 181,773 incidents of family violence in 1997, 32 percent more than in 1991.

A third-degree felony is warranted for repeated assaults against family or household members because by the time an offender actually was convicted a second time for a family violence incidence numerous other assaults likely would have occurred. Repeat offenders who take advantage of family and household members deserve harsh punishments. Any increased costs to the criminal justice system would be far outweighed by the costs to victims, law enforcement authorities, and the health care system of continuing domestic violence.

CSHB 1763 also could help break the cycle of family violence by making assaults committed in front of children state jail felonies. Children who witness family violence often are prone to repeat what they see. This stiffer penalty would not be unfair to offenders since the abuse had most likely occurred many times before the first conviction.

OPPONENTS
SAY:

Current law making third and subsequent family assault offenses state jail felonies is the appropriate punishment for this crime since it allows repeat offenders to be punished with incarceration in a state jail and a felony conviction on their record. Current law rightfully keeps this offense in the state jail system, which is designed for lower-level offenses. Serious felony punishments for assault should be saved for aggravated assaults, in which serious bodily injury is caused. All other types of non-aggravated assault, except for offenses against public servants, are misdemeanors. The Legislature should not continue to craft a special set of laws and procedures for people accused of one type of crime.

It could be inappropriate and unfair to make the first offense of assault in front of children a state jail felony. Penalties for other crimes are not enhanced based on who witnesses the crime. Persons are unlikely to know about the stiffer punishment for this type of crime, resulting in no deterrent effect.

HB 1763
House Research Organization
page 3

NOTES: The original bill would have would have created a new offense for family or household violence committed within view of a child. The committee substitute would include the provisions within the current assault statute.

The companion bill, SB 24 by Nelson et al., passed the Senate on March 16 and is pending in the House Criminal Jurisprudence Committee.