

SUBJECT: Enhancing penalty for assault committed in a dating relationship

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Keel, Riddle, Pena, Denny, Escobar, Raymond, Reyna

0 nays

2 absent — Hodge, P. Moreno

SENATE VOTE: On final passage, April 14 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 94 by Riddle:)*

For — Ana Rodriguez, Texas Council on Family Violence; Jane Waters,
Harris County District Attorney

Against — None

On — Shannon Edmonds, Texas District and County Attorneys
Association

BACKGROUND: Penal Code, ch. 22 criminalizes assaultive offenses, which include such crimes as assault, aggravated assault, sexual assault, making a terroristic threat, and leaving a child unattended in a vehicle. Under sec. 22.01, a person commits assault if the person:

- intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

An offense is a class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000. The punishment is enhanced to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the defendant intentionally, knowingly, or recklessly causes

bodily injury to a family or household member and has a prior conviction under sec. 22.01 for an offense against a family or household member.

Family Code, sec. 71.003 defines “family” as including people related by blood, marriage, or adoption; former spouses; parents of the same child, without regard to marriage; and a foster child and foster parent, without regard to whether those people live together. Sec. 71.005 defines “household” as a unit composed of persons living together in the same dwelling, without regard to whether they are related.

The 77th Legislature in 2001 enacted SB 68 by Moncrief, which placed “dating violence” within the definition of family violence under Family Code, sec. 71.004. Dating violence means an assault against a person with whom the assailant has or has had a continuing romantic or intimate relationship. Courts determine the existence of a dating relationship based on the length of the relationship, nature of the relationship, and frequency and type of interaction between the people involved. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship.

DIGEST:

CSSB 91 would make it a third-degree felony to intentionally, knowingly, or recklessly cause bodily injury to another person if:

- the offense was committed against a member of the defendant’s family, someone in the defendant’s household, or a person who had a dating relationship with the defendant; and
- it was shown at trial that the defendant had been convicted previously, or been granted deferred adjudication, for an offense under Penal Code, ch. 22 against such a person.

The bill also would allow assault convictions committed in other states to be applicable in Texas for the purpose of the enhancement provision under sec. 22.01.

The bill would take effect September 1, 2005.

SUPPORTERS
SAY:

CSSB 91 would make the Penal Code consistent with the 77th Legislature’s decision to recognize dating violence as family violence. Like members of a defendant’s family or household, a dating partner shares a special proximity to the defendant that makes the partner especially vulnerable to assault. According to the Texas Council on

Family Violence, 55 women were killed by a boyfriend or ex-boyfriend in Texas in 2003. The penalty enhancement would deter dating violence by increasing the likelihood that repeat offenders served time in jail, away from their victims.

CSSB 91 also would fix a loophole in the current law that only allows an enhancement for prior convictions under sec. 22.01. This means that a defendant convicted previously for slapping or kicking a spouse, for example, could receive a felony conviction for committing a second similar assault. However, a defendant convicted previously for having caused serious bodily injury by stabbing a spouse — an aggravated assault under sec. 22.02 — would *not* be eligible for a felony enhancement for later slapping or kicking a spouse. CSSB 91 would enhance the penalty when the defendant committed a prior, possibly more serious assault offense, bringing logical conformity to enhancement penalties for certain repeat offenders.

Prosecutors and courts commonly use discretion to apply and interpret statutes and regulations consistent with the plain meaning of the law and legislative intent. In light of the guidelines provided in the Family Code, prosecutors and courts reasonably could determine whether a victim of an assault dated the defendant.

**OPPONENTS
SAY:**

CSSB 91 could result in severe prison sentences for individuals convicted of relatively minor repeat offenses. Whereas current law requires a prior conviction for assault — a class A misdemeanor — to enhance the penalty, this bill would enhance the offense if the defendant had been convicted of any prior offense under Penal Code, ch. 22, including relatively minor offenses such as leaving a child in a vehicle, punishable only as a class C misdemeanor (maximum fine of \$500). If the child were a family or household member, the bill would trigger an enhancement against a defendant accused later of slapping a family or household member or a person who had dated the defendant. A third-degree felony for this type of offense would be too harsh.

The bill would treat spouses, parents, and children the same as those who share ambiguous relationships. In doing so, CSSB 91 would require a time-consuming analysis to determine whether people once shared a continuous dating relationship.

OTHER
OPPONENTS
SAY:

The Legislature should end the trend of penalizing differently identical conduct based solely on a victim's identity. Penalty enhancements should apply equally to all offenders, regardless of their victims' identity, in recognition of the constitutional right to equal protection under the law.

NOTES:

The substitute added a section that would make a conviction of assault in another state applicable in Texas for the purpose of the enhancement provision.

The House companion bill, HB 94 by Riddle, was reported favorably, as substituted, by the Criminal Jurisprudence Committee on April 12.