

SUBJECT: Second- and third-degree felony for domestic violence strangulation

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

2 absent — Christian, Hodge

WITNESSES: For — Shailey Gupta-Brietzkf, Aaron Setliff, Texas Council on Family Violence; Jennifer Morrison, New Beginning Center; Cheryl Dowell; Donald Smith; (*Registered, but did not testify*: Marc Chavez, Lubbock County District Attorney's Office; Katrina Daniels, Bexar County District Attorney Susan D. Reed; Kevin Petroff, Harris County District Attorney's Office; Ballard C. Shapleigh, El Paso District Attorney Jamie Esparza

Against — None

BACKGROUND: Under Penal Code, sec. 22.01, the crime of assault, which is defined as causing bodily injury or threatening imminent bodily injury to another, generally is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). In some circumstances assault is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), including if the victim is in a dating relationship with the defendant or is a member of the defendant's family or household and the defendant had a previous conviction for certain offenses. The previous conviction must be for an assaultive offense, criminal homicide, kidnapping, aggravated kidnapping, or domestic relationship cases of indecency with a child.

Under Penal Code, sec. 22.02, causing serious bodily injury or using a deadly weapon during the commission of an assault is considered aggravated assault and is a second-degree felony. The offense is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if defendants use a deadly weapon and cause serious bodily injury to someone they were dating or someone in their family or household.

DIGEST:

HB 2066 would make assault a third-degree felony if committed by strangulation or suffocation against someone with whom the defendant had a dating relationship or someone in the defendant's family or household. Specifically, the offense would be committed by impeding the normal breathing circulation of the blood of the victim by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

The same offense would be a second-degree felony if committed against someone with whom the defendant had a dating relationship or someone in the defendant's family or household and the defendant had previously been convicted of an assaultive offense, criminal homicide, kidnapping, aggravated kidnapping, or domestic relationship cases of indecency with a child.

If conduct constituting strangulation or suffocation as defined by HB 2066 also constituted another offense, the defendant could be prosecuted under either or both laws.

The bill would take effect September 1, 2009, and would apply only to offenses committed on or after that date.

SUPPORTERS
SAY:

HB 2066 is necessary because cases of strangulation and suffocation in domestic violence situations are not taken seriously enough nor punished harshly enough. By clearly defining the offense and making increased penalties available, HB 2066 would give prosecutors more tools to combat domestic violence and would better protect victims and more appropriately punish offenders.

Strangulation in domestic violence situations often is a marker of serious, life-threatening violence that the state should do all it can to stop and to punish. Strangulation has a higher fatality rate than any other form of assault, with domestic violence victims who have been strangled being nine times more likely to be killed than those who have not been strangled. Strangulation often is the result of escalating domestic violence and a sign of prolonged abuse.

Despite all of this, strangulation in domestic violence cases often is charged as a Class A misdemeanor form of assault, which does not require any minimum jail time. While it is possible under current law that some cases could be prosecuted and punished more harshly, this is rarely done

for several reasons. It can be difficult to prove bodily injury or serious bodily injury because strangulation may leave no marks and victims may appear to have no injuries. In some cases, obtaining the higher penalties can be done only if there was a previous offense. Sometimes prosecutors, judges, and juries underestimate the seriousness and potential lethality of the actions. In other cases, prosecutors are hesitant to jump from prosecuting simple assault, a misdemeanor, to aggravated assault, a more serious second-degree felony. Some prosecutors may be hesitant to try to prove that a defendant's hands were used as a deadly weapon, and this may be difficult to prove.

HB 2066 would solve these problems by clearly stating that strangulation and suffocation in domestic violence situations constituted assault and applying appropriate penalties to the first and subsequent offenses. The definitions in HB 2066 would allow prosecutors, judges, and juries to identify the offense, and the increased penalties would reflect more accurately the physical harm that can be caused by strangulation. The increased penalty could keep offenders incarcerated longer, giving victims more time to take steps to protect themselves.

The bill would give prosecutors the discretion to try strangulation cases under the law that carries the most appropriate penalty. It would do this by stating that if conduct constituting strangulation also constituted another offense, the defendant could be prosecuted under either or both laws.

The Penal Code has numerous provisions recognizing that certain victims warrant special protection and that certain offenses warrant specific definitions and penalties tailored to them.

HB 2066 would put Texas in line with 26 other states that carry a felony penalty for strangulation.

**OPPONENTS
SAY:**

Current law is adequate to prosecute and to punish cases of strangulation in domestic violence situations. Prosecutors, judges, and juries increasingly take domestic violence seriously and respond with appropriate charges and penalties.

If strangulation in a domestic violence situation causes bodily injury or serious bodily injury, it can be punished seriously under the assault or aggravated assault statutes. Many strangulation and suffocation cases have been successfully tried as aggravated assault, which is a second-degree

felony. Those committing bodily injury in a domestic violence situation who have previous convictions for other violent offenses already can be punished for a third-degree felony. If serious bodily injury is caused and a deadly weapon used, the offense can be a first-degree felony. Texas courts have recognized hands as a deadly weapon, including in strangulation cases.

The Penal Code was designed to apply equal treatment when victims were subject to similar harm, and HB 2066 would be a move away from that.

NOTES:

The companion bill, SB 1324 by Nelson, has been referred to the Senate Criminal Justice Committee