

SUBJECT: Punishment for certain third, subsequent repeat family violence assaults

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Murphy, J. White, Keough, Krause, Schubert, Tinderholt

0 nays

1 absent — Allen

WITNESSES: For — Jackie Borcharding, Williamson County District Attorney's Office;
(*Registered, but did not testify*: Frederick Frazier, Dallas Police
Association; Mark Clark, Houston Police Officers Union)

Against — (*Registered, but did not testify*: Patricia Cummings, Texas
Criminal Defense Lawyers Association)

BACKGROUND: Penal Code, sec. 22.01 establishes the offense of assault, which includes intentionally, knowingly, or recklessly causing bodily injury to another. Offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000). Certain second offenses involving family violence can be third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000). Penal Code, sec. 22.01(b-1) punishes as second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000) certain repeat assault offenses involving bodily injury and choking that are committed against someone who was the defendant's family member, in their household, or with whom they have a dating relationship.

Under Government Code, sec. 508.145(f), in general, inmates are considered for release on parole when their actual calendar time served plus good conduct time equals one-fourth of their sentences or 15 years, whichever is less. Government Code, sec. 508.145(d)(1) creates an exception to this and makes inmates serving sentences for specified violent and serious crimes ineligible for release on parole until their time served, without consideration of good conduct time, equals one-half of

their sentence or 30 years, whichever is less, with a minimum of two years.

Government Code, sec. 508.147 requires parole panels to release inmates from prison under a program called mandatory supervision, when their actual calendar time served plus good conduct time equals the term to which the inmates were sentenced. There are exceptions to this requirement making some of these releases discretionary. Government Code, sec. 508.149(a) makes inmates ineligible for release on mandatory supervision if they are serving sentences or had been previously convicted of specific crimes listed in the section. Inmates released on mandatory supervision are considered to be on parole and are under the supervision of the parole division of the Texas Department of Criminal Justice (TDCJ).

DIGEST: CSHB 1897 would punish certain repeat assault offenses as second-degree felonies if they involved bodily injury and were committed against someone in the defendant's family, someone in the defendant's household, or someone with whom the defendant had a dating relationship and the defendant had certain previous convictions. The defendant would have to have at least two previous convictions for an assaultive offense, homicide, kidnapping, aggravated kidnapping, or indecency with a child, committed against one of these individuals. Current provisions that establish when a defendant is considered to have a previous offense for second-degree assault against a family member would apply to these cases.

Defendants given probation or deferred adjudication, a type of probation, for these offenses would have to be required to serve two years confinement as a condition of probation or deferred adjudication.

CSHB 1897 would add offenders convicted of these assaults to the list of those in Government Code, sec. 508.145(d)(1) who are not eligible for parole until their actual calendar time served, without consideration of good conduct time, equals one-half of their sentence, or 30 years, whichever is less, with a minimum of two years. The bill would add offenders punished under these new provisions to the list of those for

which release on mandatory supervision was prohibited.

Courts would be required to order defendants sentenced to prison for assaults defined by CSHB 1897 to reimburse the Texas Department of Criminal Justice for the cost of confinement. Courts placing defendants on probation or deferred adjudication for such assaults would have to require the defendant to reimburse the county or a probation department for the cost of the two-year confinement required by the bill.

These costs would be waived if the court determined that the defendant was indigent. Courts could reduce the amount assessed a defendant by considering the defendant's employment, earning ability, financial resources, and other circumstances including child support obligations and restitution payments owed by the defendant. Defendants would have 10 years to make the reimbursements.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1897 would help address the problem of repeat family violence offenders who commit serious assaults and endanger their family, members of their households, or others to whom they are close. Currently, after a second serious assaultive offense involving family, additional assaults would be third-degree felonies. Some offenders may even get probation in these cases. This is inadequate given that violence in these cases often escalates, sometimes resulting in very serious injury or homicide.

The bill would increase the punishment on certain third and subsequent assaults in family violence cases to more appropriately punish these serial offenders who have demonstrated a clear pattern of violence and to better protect victims by placing abusers behind bars. The bill would ensure a minimum sentence of two years of incarceration, even in probation cases, and would restrict parole consideration and release on mandatory supervision for these offenders so that all of them would spend meaningful time incarcerated. A statewide, uniform requirement is needed

to ensure all such cases are handled appropriately.

CSHB 1897 would create a mechanism for these offenders to reimburse the state or localities for their confinement, if they had the means. This requirement would not be unfair or burdensome as reimbursements could be waived for those who were indigent or had other extenuating circumstances, and repayment could be made over 10 years.

**OPPONENTS
SAY:**

CSHB 1897 is unnecessary because those repeatedly convicted of assault in family violence cases could be punished under provisions for repeat and habitual felony offenders. In some cases, these provisions would result in more serious punishments than what would be required in CSHB 1897. The bill should not mandate a minimum confinement sentence for those placed on probation or deferred adjudication but should continue to leave this decision up to courts.

CSHB 1897 should not restrict eligibility for mandatory supervision or delay parole consideration for the offenders described by the bill. While the offenses in CSHB 1897 are serious, each case should continue to be considered individually through the current process instead of falling under blanket provisions prohibiting release or delaying parole eligibility. Current law creates a fair system of review under which release on parole is considered but not mandated.

Requiring offenders to reimburse the state for the cost of their confinement could be unfair in some situations and burden those who are trying to get back on their feet after being incarcerated.