

SUBJECT: Enhancing penalty for assault against groups defined under Family Code

COMMITTEE: Criminal Jurisprudence — favorable, without amendments

VOTE: 7 ayes — Keel, Riddle, Ellis, Denny, Hodge, Pena, Talton

0 nays

2 absent — Dunnam, P. Moreno

SENATE VOTE: On final passage, May 1 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Penal Code, ch. 22 criminalizes assaultive offenses, including simple assault; sexual assault; coercing, soliciting, or inducing gang membership; aggravated assault; aggravated sexual assault; injury to a child or an elderly or disabled person; abandoning or endangering a child; deadly conduct; terroristic threat; aiding suicide; tampering with consumer product; leaving a child in a vehicle; and harassment by people in certain correctional facilities. Sec. 22.01 specifies that 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.

It is a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) intentionally, knowingly, or recklessly to cause bodily injury to another, including the person's spouse. 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 offense is committed against:

- a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or
- a member of the defendant’s family or household, if it is shown at trial that the defendant has been convicted previously of an offense against a member of the defendant’s family or household.

A defendant has been convicted previously of an offense against a member of the defendant’s family or household if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was imposed or whether the sentence was probated and the defendant later was discharged from community supervision.

Family Code, sec. 71.003 defines “family” as including people related by consanguinity or affinity, 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, including dating violence within the definition of family violence under Family Code, sec. 71.004. Dating violence means an assaultive act by a person against another person with whom the assailant has or has had a continuing relationship of a romantic or intimate nature. Courts determine the existence of a dating relationship based on consideration of 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:

SB 686 would make it a third-degree felony intentionally, knowingly, or recklessly to cause bodily injury to another person if:

- the offense was committed against the defendant’s family, 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

of an offense under Penal Code, ch. 22 against such a person.

The bill would specify that a defendant would have been convicted previously of an offense under ch. 22 if the defendant had committed the offense against the defendant's family, household, or a person with whom the defendant had a dating relationship.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

SB 686 properly would enhance the punishment for an assault committed against a defendant's family member, household member, or a person whom the defendant had dated, if the defendant had been convicted previously of an offense under Penal Code, ch. 22.

Prosecutors already can seek a felony enhancement against a defendant with a prior conviction for assault. In application, this means that a defendant convicted previously for having slapped or kicked a spouse, for example, can receive a felony conviction for committing a similar assault later. However, a defendant convicted previously for having caused serious bodily injury by stabbing a spouse — an aggravated assault under sec. 22.02 — is *not* eligible for a felony enhancement for later slapping or kicking a spouse. SB 686 would authorize an enhanced penalty if a defendant assaulted certain people, under sec. 22.01, if the defendant was convicted previously for another, possibly more serious assaultive offense against such a person. In so doing, the bill would bring logical conformity to enhancement penalties against certain repeat assaultive offenders.

SB 686 also would enable a prosecutor to seek an enhanced penalty against a defendant who assaulted a person the defendant had dated on a continuing basis. Consistent with the 77th Legislature's decision to recognize dating violence as family violence, this bill would provide additional deterrence and retribution on behalf of victims of violence within a dating relationship. 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. The bill properly would acknowledge the special protections from crime these people deserve by increasing substantially the likelihood that the felon would serve jail time.

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 could identify reasonably whether a victim of an assault had dated the defendant continuously.

**OPPONENTS
SAY:**

SB 686 would authorize too broad an enhancement for committing an assault against certain people. 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 the relatively minor offense of leaving a child in a vehicle, punishable only as a Class C misdemeanor (maximum fine of \$500). Because the child a defendant might leave in a car likely would be a family or household member, the bill would trigger enhancement against a defendant accused later of slapping a family or household member or a person who had dated the defendant. Such an enhancement would not serve justice.

Also, the bill improperly would confer to people who share ambiguous relationships with defendants the same treatment afforded spouses, fellow parents, and children. To the extent that statutes dictate penalties based in part on victims' identities, those identities should be defined easily and strictly, not subject to the time-consuming analysis required by current law 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.