

SUBJECT: Creating the offense of continuous violence against the family

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

2 absent — Christian, Riddle

WITNESSES: *(On original version:)*
For — *(Registered, but did not testify:* Marc Chavez, Lubbock County District Attorney's Office; Katrina Daniels, Bexar County District Attorney's Office; James Jones, Houston Police Department; Kevin Petroff, Harris County District Attorney's Office; Ballard C. Shapleigh, El Paso District Attorney's Office)

Against — *(Registered, but did not testify:* Samuel England, American Civil Liberties Union of Texas)

On — Shannon Edmonds, Texas District and County Attorneys Association; *(Registered, but did not testify:* Aaron Setliff, The Texas Council on Family Violence)

BACKGROUND: Penal Code, ch. 71 defines “family violence” as:

- abuse by a member of a family or household toward a child of the family or household; or
- an act that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places a person in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself by a member of a family or household against another member of the family or household, or by an individual against another with whom that person has or had a dating relationship.

“Family” is defined to include individuals related by consanguinity or affinity, former spouses of each other, parents of the same child, and a

foster child and foster parent, without regard to whether those individuals reside together.

A “dating relationship” is defined as a continuing relationship of a romantic or intimate nature.

“Household” is defined as a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

DIGEST:

CSHB 2240 would amend Penal Code, ch. 25 by adding sec. 25.11, which would create the offense of continuous violence against the family. A person would commit this offense if, during a period of 12 months or less, the person caused bodily injury to another by committing family violence. An offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

A jury would have to agree unanimously that the defendant was guilty, but would not need to agree unanimously on the specific conduct or the exact date the conduct occurred.

A defendant could not be convicted of another offense in the same criminal action as the continuous violence against the family offense if the other offense involved the same victim and an element of conduct that was the same for both offenses, unless the other offense:

- was charged in the alternative;
- occurred outside the period in which the continuous violence against the family offense was committed; or
- was considered by the trier of fact to be a lesser included offense of the continuous violence against the family offense.

A defendant could not be charged with more than one count of continuous violence against the family if all of the specific conduct alleged to have been engaged in was alleged to have been committed against a single victim or members of the same household.

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

**SUPPORTERS
SAY:**

CSHB 2240 would recognize the serious, continual nature of these types of violent offenses against family and household members and would punish offenders accordingly. Currently, repeated episodes of violence against family and household members are treated as isolated incidents, and are usually punished as misdemeanors. Family violence usually is an escalating situation. The bill would be a preventative measure that would allow for earlier classification of dangerous offenders as felons and could prevent the violence from escalating further.

By providing more severe punishment, CSHB 2240 would encourage victims to come forward, deter offenders and, ultimately, save lives. Knowing an abuser would be arrested, only to post bail and return home shortly after, keeps many victims from reporting the violence. This allows the offender to get away with the crime, and to be emboldened by the knowledge that he can commit more acts of violence without punishment.

**OPPONENTS
SAY:**

A penalty enhancement generally is not an effective deterrent. The cost of incarcerating offenders would be an additional financial burden for the state and would divert resources away from other important efforts that could do more to reduce recidivism or promote prevention.