

- SUBJECT:** First-degree felony for death of child or senior caused by dog attack
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Zedler
- 0 nays
- 1 absent — Rodriguez
- WITNESSES:** For — *(Registered, but did not testify:* Shanna Igo, Texas Municipal League; Daphne Session; JP Urrabazo, CenterPoint Energy)
- Against — Renee Hopper
- BACKGROUND:** In 2007 the 80th Legislature enacted HB 1355, making it a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the owner of a dog:
- is criminally negligent and fails to secure the dog, which attacks another person unprovoked off of the owner’s property and causes serious bodily injury; or
 - knows the dog is dangerous and it makes an unprovoked attack on another person outside of a secure enclosure, causing serious bodily injury.
- If the victim dies as a result of the attack, the offense is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).
- According to Health and Safety Code, ch. 822, a person is aware of owning a “dangerous dog” if the owner knows that the dog has committed unprovoked attacks or acts or if the owner has received notice from a court or animal control authority that the dog is dangerous.
- DIGEST:** CSHB 1389 would make the dog attack offense 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 the attack caused death to a person younger than 18 years old or at least 65 years old.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1389 would ensure that dog owners were held responsible for the vicious acts of their dogs and would protect those most vulnerable to these attacks — children and senior citizens. CSHB 1389 would not punish responsible pet owners; it would punish only people who knew their dogs were dangerous and likely to attack. Current law was enacted in 2007 in response to a brutal 2005 attack on 76-year old Lillian Stiles, who was killed by a pack of six pit bull-rottweiler mixed breeds that escaped from a neighbor's yard. Attacks have continued, and increasing the penalty for instances when victims are children or seniors is necessary to ensure that dangerous dog owners keep their dogs away from vulnerable populations.

Strict liability, in which people are held responsible regardless of their mental state, would be appropriate when children or seniors were killed by a dangerous dog. Even if the offender did not intend to kill someone, the offender knew the dog could kill someone and did not secure the dog. Other criminal statutes impose strict liability, such as for driving while intoxicated, and a person can be convicted of certain felonies without a showing of a culpable mental state, such as for statutory rape, which does not require a prosecutor to show that a person meant to have sex with a minor.

**OPPONENTS
SAY:**

CSHB 1389 improperly would allow a person to be prosecuted for a first-degree felony without a showing of mental culpability. Most first-degree felonies are intentional crimes, like murder or rape. This bill could result in a life sentence for the unintentional killing of a neighbor child by a dog. The person would not have to know that the dog was dangerous, but only would have to meet the mental state of criminal negligence, meaning that he or she should have been aware of a substantial and unjustifiable risk. This is not a sufficiently high standard to justify life in prison.

In addition, CSHB 1389 would not ensure that people were protected from dangerous dogs, because the law would be solely punitive and not preventative.

NOTES: The committee substitute differs from the original in that it would apply to persons younger than 18 instead of persons younger than 15 who died from a dog attack.