

SUBJECT: Minimum jail time for family violence assault in the presence of a child

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody,  
Schaefer, Toth

0 nays

WITNESSES: For — Candice Freeman, Galveston County District Attorney's Office;  
(*Registered, but did not testify*: Lon Craft, Texas Municipal Police  
Association; Steven Tays, Bexar County Criminal District Attorney's  
Office)

Against — None

On — Aaron Setliff, The Texas Council on Family Violence

BACKGROUND: Penal Code, sec. 22.01 makes assault a class A misdemeanor (up to one  
year in jail and/or a maximum fine of \$4,000). The crime is a third-degree  
felony (two to 10 years in prison and an optional fine of up to \$10,000) if  
it involves certain types of family violence.

DIGEST: HB 2396 would institute a minimum term of confinement of 30 days for  
assault offenses that involved certain types of family violence, if the  
offense did not fall under the current third-degree family violence  
exception, and if:

- it were committed in the presence or within hearing of a person  
younger than 15 years old; and
- at the time the defendant knew or had reason to know that the  
person younger than 15 years old was near.

A judge granting community supervision to a person convicted under the  
conditions described in HB 2396 would have to require the defendant to  
submit to at least five days of continuous confinement in a county jail.

The bill would take effect September 1, 2013, and would apply to offenses  
committed on or after that date.

**SUPPORTERS  
SAY:**

HB 2396 would address the harm that domestic violence can have on children who witness it.

The bill would address this issue by requiring a person convicted of assault involving family violence in the presence of a child to serve a minimum amount of jail time. Under the bill, these offenders would have to serve a minimum of 30 days in jail, and those being placed on probation would have to serve a minimum of five days in jail. This would help to deter these offenses and to better punish these offenders, who under current law could end up with no time under confinement. The damage done to children involved in these cases warrants at least some time in jail.

Putting these requirements into statute would ensure that this minimal, appropriate punishment was applied uniformly to all offenders. Judges would continue to have discretion about other aspects of the sentence or probation.

HB 2396 would not necessitate children being called as witnesses in these cases. As under current law, any such decision would continue to be up to prosecutors who use their best discretion in individual cases and consider the welfare of the child and family.

With this bill, Texas would join about 20 other states that are addressing the serious issue of children who witness family violence by adjusting punishments in these cases.

**OPPONENTS  
SAY:**

HB 2396 is unnecessary. Under current law courts have authority to require incarceration time with assault convictions. Mandating that courts impose a punishment would infringe on their discretion to handle individual cases as they saw fit. Courts that want to address cases in which children witness family violence can craft jail terms, fines, and probation conditions that fit the crime.

HB 2396 could lead to prosecutors who want to ensure that the minimal jail time was applied calling children as witnesses in these cases when it might not be in the best interest of the child.