

- SUBJECT:** Increasing penalties for family violence crimes in presence of a child
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco
- 0 nays
- WITNESSES:** For — Billy Cordell, Burleson Police Department; Ken Shetter, City of Burleson and One Safe Place; Francine DeLongchamp; (*Registered, but did not testify*: Pete Gallego, Bexar County Criminal District Attorney’s Office; TJ Patterson, City of Fort Worth; Jennifer Tharp, Comal County Criminal District Attorney; Frederick Frazier, Dallas Police Association, FOP 716, State FOP; Vincent Giardino, Tarrant County Criminal District Attorney's Office)
- Against — (*Registered, but did not testify*: Chris Harris, Just Liberty; Ambrosia Urias, Texas Advocacy Project; Linda Phan, Texas Council on Family Violence; James Grace Jr., The Houston Area Women's Center)
- BACKGROUND:** Penal Code sec. 22.01 establishes the crime of assault. The crime generally is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) but is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if committed against a family or household member or within a dating relationship. The offense is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) in this same situation if the defendant had a previous conviction for assault, criminal homicide, kidnapping, aggravated kidnapping, or indecency with a child and the assault was committed by choking.
- Aggravated assault is established in Penal Code sec. 22.02. The offense generally is a second-degree felony but is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) under certain circumstances, including if a deadly weapon was

used during the assault and caused serious bodily injury to someone associated with the defendant by a family, household, or dating relationship.

DIGEST:

CSHB 24 would increase penalties for assault and aggravated assault if committed against a family or household member or within a dating relationship and in the physical presence of another person younger than 18 years old or if the defendant had reason to believe that someone younger than 18 years old was present and could see or hear the offense. Assault would be increased from a class A misdemeanor to a state jail felony, and aggravated assault would be increased from a second-degree felony to a first-degree felony.

The bill would prevail over another act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

The bill would take effect September 1, 2019, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 24 would increase protection and help for children who suffered harm by witnessing domestic violence, recognize their victimization, and more appropriately punish those who inflicted this harm.

The bill would send a clear message that these children deserve special protections. When children are exposed to domestic violence they also become victims, and often the violence is purposefully committed in front of the child. This exposure to domestic violence can harm children in multiple ways, including fostering psychological and emotional problems, harming cognitive functioning, and contributing to long-term developmental issues such as depression and low self-esteem. The exposure also can increase the likelihood of drug and alcohol abuse, self-harm, and becoming domestic abusers.

The bill would help these child victims, who are suffering harm under current law. Identifying these children could help connect them to needed

programs and services and could serve as a record of the abuse in future custody or visitation proceedings. Several other states have similar laws, and there is no data pointing to negative outcomes as a result. Prosecutors would have discretion about using the enhancement and could consider the individual circumstances of a case to protect the interests of a child victim. One Texas city has a similar ordinance and has handled cases in ways so as not to re-traumatize children, such as using adult witnesses and other evidence.

Enhancing the penalty for domestic violence committed in the presence of children would help ensure that these offenders received appropriate punishment for their crime. The multiple victims of these offenses would warrant the increased punishment, which also could serve as a deterrent to violence.

**OPPONENTS
SAY:**

CSHB 24 could harm children who witness domestic violence. There could be no protection for children from retribution from the perpetrators of family violence during or after a prosecution. Having to prove the circumstances for the enhanced penalty could result in children becoming witnesses in court proceedings and being re-traumatized and endangered through that process. An enhanced penalty could chill the cooperation and engagement of victims with law enforcement authorities.