

1-1 By: Nelson, Carona S.B. No. 1324
1-2 (In the Senate - Filed March 4, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 29, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 29, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1324 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to enhancing penalties for assaulting a family member by
1-11 strangulation or suffocation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 22.01, Penal Code, is amended by
1-14 amending Subsections (b) and (f) and adding Subsections (b-1) and
1-15 (g) to read as follows:

1-16 (b) An offense under Subsection (a)(1) is a Class A
1-17 misdemeanor, except that the offense is a felony of the third degree
1-18 if the offense is committed against:

1-19 (1) a person the actor knows is a public servant while
1-20 the public servant is lawfully discharging an official duty, or in
1-21 retaliation or on account of an exercise of official power or
1-22 performance of an official duty as a public servant;

1-23 (2) a person whose relationship to or association with
1-24 the defendant is described by Section 71.0021(b), 71.003, or
1-25 71.005, Family Code, if:

1-26 (A) it is shown on the trial of the offense that
1-27 the defendant has been previously convicted of an offense under
1-28 this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against
1-29 a person whose relationship to or association with the defendant is
1-30 described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

1-31 (B) the offense is committed by intentionally,
1-32 knowingly, or recklessly impeding the normal breathing or
1-33 circulation of the blood of the person by applying pressure to the
1-34 person's throat or neck or by blocking the person's nose or mouth;

1-35 (3) a person who contracts with government to perform
1-36 a service in a facility as defined by Section 1.07(a)(14), Penal
1-37 Code, or Section 51.02(13) or (14), Family Code, or an employee of
1-38 that person:

1-39 (A) while the person or employee is engaged in
1-40 performing a service within the scope of the contract, if the actor
1-41 knows the person or employee is authorized by government to provide
1-42 the service; or

1-43 (B) in retaliation for or on account of the
1-44 person's or employee's performance of a service within the scope of
1-45 the contract;

1-46 (4) a person the actor knows is a security officer
1-47 while the officer is performing a duty as a security officer; or

1-48 (5) a person the actor knows is emergency services
1-49 personnel while the person is providing emergency services.

1-50 (b-1) Notwithstanding Subsection (b)(2), an offense under
1-51 Subsection (a)(1) is a felony of the second degree if:

1-52 (1) the offense is committed against a person whose
1-53 relationship to or association with the defendant is described by
1-54 Section 71.0021(b), 71.003, or 71.005, Family Code;

1-55 (2) it is shown on the trial of the offense that the
1-56 defendant has been previously convicted of an offense under this
1-57 chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a
1-58 person whose relationship to or association with the defendant is
1-59 described by Section 71.0021(b), 71.003, or 71.005, Family Code;
1-60 and

1-61 (3) the offense is committed by intentionally,
1-62 knowingly, or recklessly impeding the normal breathing or
1-63 circulation of the blood of the person by applying pressure to the

2-1 person's throat or neck or by blocking the person's nose or mouth.

2-2 (f) For the purposes of Subsections (b)(2)(A) and (b-1)(2)
2-3 [Subsection (b)(2)]:

2-4 (1) a defendant has been previously convicted of an
2-5 offense listed in those subsections ~~[Subsection (b)(2)]~~ committed
2-6 against a person whose relationship to or association with the
2-7 defendant is described by Section 71.0021(b), 71.003, or 71.005,
2-8 Family Code, if the defendant was adjudged guilty of the offense or
2-9 entered a plea of guilty or nolo contendere in return for a grant of
2-10 deferred adjudication, regardless of whether the sentence for the
2-11 offense was ever imposed or whether the sentence was probated and
2-12 the defendant was subsequently discharged from community
2-13 supervision; and

2-14 (2) a conviction under the laws of another state for an
2-15 offense containing elements that are substantially similar to the
2-16 elements of an offense listed in those subsections ~~[Subsection~~
2-17 ~~(b)(2)]~~ is a conviction of the ~~[an]~~ offense listed ~~[in Subsection~~
2-18 ~~(b)(2)]~~.

2-19 (g) If conduct constituting an offense under this section
2-20 also constitutes an offense under another section of this code, the
2-21 actor may be prosecuted under either section or both sections.

2-22 SECTION 2. The change in law made by this Act applies only
2-23 to an offense committed on or after the effective date of this Act.
2-24 An offense committed before the effective date of this Act is
2-25 covered by the law in effect when the offense was committed, and the
2-26 former law is continued in effect for that purpose. For purposes of
2-27 this section, an offense was committed before the effective date of
2-28 this Act if any element of the offense occurred before that date.

2-29 SECTION 3. This Act takes effect September 1, 2009.

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