

SENATE AMENDMENTS

2nd Printing

By: Gallego, Moody, Bolton, et al.

H.B. No. 2066

A BILL TO BE ENTITLED

1 AN ACT

2 relating to enhancing penalties for assaulting a family member by
3 strangulation or suffocation.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 (b) An offense under Subsection (a)(1) is a Class A
9 misdemeanor, except that the offense is a felony of the third degree
10 if the offense is committed against:

11 (1) a person the actor knows is a public servant while
12 the public servant is lawfully discharging an official duty, or in
13 retaliation or on account of an exercise of official power or
14 performance of an official duty as a public servant;

15 (2) a person whose relationship to or association with
16 the defendant is described by Section 71.0021(b), 71.003, or
17 71.005, Family Code, if:

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

23 (B) the offense is committed by impeding the
24 normal breathing or circulation of the blood of the person by

1 applying pressure to the person's throat or neck or by blocking the
2 person's nose or mouth in a manner that, if continued, would cause
3 the person to lose consciousness;

4 (3) a person who contracts with government to perform
5 a service in a facility as defined by Section 1.07(a)(14), Penal
6 Code, or Section 51.02(13) or (14), Family Code, or an employee of
7 that person:

8 (A) while the person or employee is engaged in
9 performing a service within the scope of the contract, if the actor
10 knows the person or employee is authorized by government to provide
11 the service; or

12 (B) in retaliation for or on account of the
13 person's or employee's performance of a service within the scope of
14 the contract;

15 (4) a person the actor knows is a security officer
16 while the officer is performing a duty as a security officer; or

17 (5) a person the actor knows is emergency services
18 personnel while the person is providing emergency services.

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

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

24 (2) it is shown on the trial of the offense that the
25 defendant has been previously convicted of an offense under this
26 chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a
27 person whose relationship to or association with the defendant is

1 described by Section 71.0021(b), 71.003, or 71.005, Family Code;
2 and

3 (3) the offense is committed by impeding the normal
4 breathing or circulation of the blood of the person by applying
5 pressure to the person's throat or neck or by blocking the person's
6 nose or mouth in a manner that, if continued, would cause the person
7 to lose consciousness.

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

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

20 (2) a conviction under the laws of another state for an
21 offense containing elements that are substantially similar to the
22 elements of an offense listed in those subsections ~~[Subsection~~
23 ~~(b)(2)]~~ is a conviction of the ~~[an]~~ offense listed ~~[in Subsection~~
24 ~~(b)(2)]~~.

25 (g) If conduct constituting an offense under this section
26 also constitutes an offense under another section of this code, the
27 actor may be prosecuted under either section or both sections.

1 SECTION 2. The change in law made by this Act applies only
2 to an offense committed on or after the effective date of this Act.
3 An offense committed before the effective date of this Act is
4 covered by the law in effect when the offense was committed, and the
5 former law is continued in effect for that purpose. For purposes of
6 this section, an offense was committed before the effective date of
7 this Act if any element of the offense occurred before that date.

8 SECTION 3. This Act takes effect September 1, 2009.

ADOPTED

MAY 21 2009

Atty. Gen.
Secretary of the Senate

By: Gallego/SP Nelson

H.B. No. 2066

Substitute the following for H.B. No. 2066:

By: *[Signature]*

C.S.H.B. No. 2066

A BILL TO BE ENTITLED

1 AN ACT
2 relating to enhancing penalties for assaulting a family member by
3 strangulation or suffocation.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 (b) An offense under Subsection (a)(1) is a Class A
9 misdemeanor, except that the offense is a felony of the third degree
10 if the offense is committed against:

11 (1) a person the actor knows is a public servant while
12 the public servant is lawfully discharging an official duty, or in
13 retaliation or on account of an exercise of official power or
14 performance of an official duty as a public servant;

15 (2) a person whose relationship to or association with
16 the defendant is described by Section 71.0021(b), 71.003, or
17 71.005, Family Code, if:

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

23 (B) the offense is committed by intentionally,
24 knowingly, or recklessly impeding the normal breathing or

1 circulation of the blood of the person by applying pressure to the
2 person's throat or neck or by blocking the person's nose or mouth;

3 (3) a person who contracts with government to perform
4 a service in a facility as defined by Section 1.07(a)(14), Penal
5 Code, or Section 51.02(13) or (14), Family Code, or an employee of
6 that person:

7 (A) while the person or employee is engaged in
8 performing a service within the scope of the contract, if the actor
9 knows the person or employee is authorized by government to provide
10 the service; or

11 (B) in retaliation for or on account of the
12 person's or employee's performance of a service within the scope of
13 the contract;

14 (4) a person the actor knows is a security officer
15 while the officer is performing a duty as a security officer; or

16 (5) a person the actor knows is emergency services
17 personnel while the person is providing emergency services.

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

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

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

1 and

2 (3) the offense is committed by intentionally,
3 knowingly, or recklessly impeding the normal breathing or
4 circulation of the blood of the person by applying pressure to the
5 person's throat or neck or by blocking the person's nose or mouth.

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

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

18 (2) a conviction under the laws of another state for an
19 offense containing elements that are substantially similar to the
20 elements of an offense listed in those subsections [~~Subsection~~
21 ~~(b)(2)~~] is a conviction of the [~~an~~] offense listed [~~in Subsection~~
22 ~~(b)(2)~~].

23 (g) If conduct constituting an offense under this section
24 also constitutes an offense under another section of this code, the
25 actor may be prosecuted under either section or both sections.

26 SECTION 2. The change in law made by this Act applies only
27 to an offense committed on or after the effective date of this Act.

1 An offense committed before the effective date of this Act is
2 covered by the law in effect when the offense was committed, and the
3 former law is continued in effect for that purpose. For purposes of
4 this section, an offense was committed before the effective date of
5 this Act if any element of the offense occurred before that date.

6 SECTION 3. This Act takes effect September 1, 2009.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 23, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2066 by Gallego (Relating to enhancing penalties for assaulting a family member by strangulation or suffocation), **As Passed 2nd House**

The probable fiscal impact of implementing the provisions of the bill would depend on the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person.

The bill would amend the Penal Code to increase the punishment of assault if committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth from a Class A misdemeanor to a felony of the third degree. The offense would be punishable as a felony of the second degree if: the offense is committed against a family member, household member, or someone in a dating relationship with the defendant; it is shown at the trial the defendant has been previously convicted of certain violent offenses; and the offense is committed by impeding the normal breathing or circulation of the blood of the person. The bill provides that if conduct constituting the offense of assault also constitutes an offense under another law, the actor may be prosecuted under either law or under both laws.

The bill would take effect on September 1, 2009 and would apply to an offense committed on or after the effective date.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or, longer terms of confinement in county jails or prison. A check of Texas Department of Criminal Justice records, Department of Public Safety records, Office of Court Administration records, and Jail Standards Commission records did not reveal any information that would help in an accurate assumption regarding assaults in which the offense is committed by impeding the normal breathing or circulation of the blood of the person by applying pressure to a person's throat or neck or by blocking the person's nose or mouth; therefore, the probable impact of implementing the bill cannot be determined.

Local Government Impact

The probable fiscal impact on local government would depend on the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by strangulation or suffocation.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, SD, ESi, GG, LM, TMP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 13, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2066 by Gallego (Relating to enhancing penalties for assaulting a family member by strangulation or suffocation.), **Committee Report 2nd House, Substituted**

The probable impact of implementing the provision would depend on the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person.

The bill would amend the Penal Code to increase the punishment of assault if committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth from a Class A misdemeanor to a felony of the third degree. The offense would be punishable as a felony of the second degree if: the offense is committed against a family member, household member, or someone in a dating relationship with the defendant; it is shown at the trial the defendant has been previously convicted of certain violent offenses; and the offense is committed by impeding the normal breathing or circulation of the blood of the person. The bill provides that if conduct constituting the offense of assault also constitutes an offense under another law, the actor may be prosecuted under either law or under both laws.

The bill would take effect on September 1, 2009 and would apply to an offense committed on or after the effective date.

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Local Government Impact

The probable fiscal impact on local government would depend on the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by strangulation or suffocation.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM, TMP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 8, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2066 by Gallego (Relating to enhancing penalties for assaulting a family member by strangulation or suffocation.), **As Engrossed**

The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by impeding the normal breathing or circulation of the blood of a person.

The bill would amend the Penal Code to increase the punishment of assault if committed by impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth from a Class A misdemeanor to a felony of the third degree. The offense would be punishable as a felony of the second degree if: the offense is committed against a family member, household member, or someone in a dating relationship with the defendant; it is shown at the trial that the defendant has been previously convicted of certain violent offenses; and the offense is committed by impeding the normal breathing or circulation of the blood of the person. The bill provides that if conduct constituting the offense of assault also constitutes an offense under another law, the actor may be prosecuted under either law or under both laws.

The bill would take effect on September 1, 2009 and would apply to an offense committed on or after the effective date.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or, longer terms of confinement in county jails or prison. A check of Texas Department of Criminal Justice records, Department of Public Safety records, Office of Court Administration records, and Jail Standards Commission records did not reveal any information that would help in an accurate assumption regarding assaults in which the offense is committed by impeding the normal breathing or circulation of the blood of the person by applying pressure to a person's throat or neck or by blocking the person's nose or mouth; therefore, the probable impact of implementing the bill cannot be determined.

Local Government Impact

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Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, TMP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 23, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2066 by Gallego (Relating to enhancing penalties for assaulting a family member by strangulation or suffocation.), **As Introduced**

The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by strangulation or suffocation.

The bill would amend the Penal Code to increase the punishment of assault by strangulation or suffocation of a person whose relationship to the defendant is family member, household member, or dating relationship from a Class A misdemeanor to punishable as a felony of the third degree. The offense would be punishable as a felony of the second degree if the defendant has a prior conviction of certain offenses against a family member, household member, or someone in a dating relationship with the defendant.

The bill would take effect on September 1, 2009 and would apply to an offense committed on or after the effective date.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or, longer terms of confinement in county jails or prison. A check of Texas Department of Criminal Justice records, Department of Public Safety records, Office of Court Administration records, and Jail Standards Commission records did not reveal any information that would help in an accurate assumption regarding assault by strangulation or suffocation against a family member, household member, or someone in a dating relationship with the defendant; therefore, the probable impact of implementing the bill cannot be determined.

Local Government Impact

The probable fiscal impact on local government cannot be determined due to the unavailability of reliable data or information related to the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by strangulation or suffocation.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, TMP

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 13, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2066 by Gallego (Relating to enhancing penalties for assaulting a family member by strangulation or suffocation.), **Committee Report 2nd House, Substituted**

The bill would amend the Penal Code to increase the punishment of assault if committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth from a Class A misdemeanor to a felony of the third degree. The offense would be punishable as a felony of the second degree if: the offense is committed against a family member, household member, or someone in a dating relationship with the defendant; it is shown at the trial that the defendant has been previously convicted of certain violent offenses; and the offense is committed by impeding the normal breathing or circulation of the blood of the person. The bill provides that if conduct constituting the offense of assault also constitutes an offense under another law, the actor may be prosecuted under either law or under both laws.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the second degree is punishable by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

In fiscal year 2008, approximately 1,200 offenders were admitted to prison and state jail for assault of a person whose relationship to the defendant is family member, household member, or dating relationship. There were approximately 600 offenders placed on felony community supervision and approximately 3,500 offenders placed on misdemeanor community supervision in fiscal year 2008 for assault of a person whose relationship to the defendant is family member, household member, or dating relationship. The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to offenses committed by impeding the normal breathing or circulation of the blood of the person by applying pressure to a person's throat or neck or by blocking the person's nose or mouth.

Source Agencies:

LBB Staff: JOB, GG, LM, TMP

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 11, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2066 by Gallego (Relating to enhancing penalties for assaulting a family member by strangulation or suffocation.), **As Engrossed**

The bill would amend the Penal Code to increase the punishment of assault if committed by impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth from a Class A misdemeanor to a felony of the third degree. The offense would be punishable as a felony of the second degree if: the offense is committed against a family member, household member, or someone in a dating relationship with the defendant; it is shown at the trial that the defendant has been previously convicted of certain violent offenses; and the offense is committed by impeding the normal breathing or circulation of the blood of the person. The bill provides that if conduct constituting the offense of assault also constitutes an offense under another law, the actor may be prosecuted under either law or under both laws.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

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Source Agencies:

LBB Staff: JOB, GG, TMP

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

March 23, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2066 by Gallego (Relating to enhancing penalties for assaulting a family member by strangulation or suffocation.), **As Introduced**

The bill would amend the Penal Code to increase the punishment of assault by strangulation or suffocation of a person whose relationship to the defendant is family member, household member, or dating relationship from a Class A misdemeanor to punishable as a felony of the third degree. The offense would be punishable as a felony of the second degree if the defendant has a prior conviction of certain offenses against a family member, household member, or someone in a dating relationship with the defendant.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the second degree is punishable by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

In fiscal year 2008, approximately 1,200 offenders were admitted to prison and state jail for assault of a person whose relationship to the defendant is family member, household member, or dating relationship. There were approximately 600 offenders placed on felony community supervision and approximately 3,500 offenders placed on misdemeanor community supervision in fiscal year 2008 for assault of a person whose relationship to the defendant is family member, household member, or dating relationship. The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to the number of times assault against a family member, household member, or someone in a dating relationship with the defendant occurred by strangulation or suffocation.

Source Agencies:

LBB Staff: JOB, TMP

