

SENATE AMENDMENTS

2nd Printing

By: Lewis, Vaught, Moody, Guillen

H.B. No. 2240

A BILL TO BE ENTITLED

AN ACT

relating to creating the offense of continuous violence against the family.

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

SECTION 1. Chapter 25, Penal Code, is amended by adding Section 25.11 to read as follows:

Sec. 25.11. CONTINUOUS VIOLENCE AGAINST THE FAMILY. (a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 22.01(a)(1) against another person or persons whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code.

(b) If the jury is the trier of fact, members of the jury are not required to agree unanimously on the specific conduct in which the defendant engaged that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a) or the exact date when that conduct occurred. The jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a).

(c) A defendant may not be convicted in the same criminal action of another offense the victim of which is an alleged victim

1 of the offense under Subsection (a) and an element of which is any
2 conduct that is alleged as an element of the offense under
3 Subsection (a) unless the other offense:

4 (1) is charged in the alternative;
5 (2) occurred outside the period in which the offense
6 alleged under Subsection (a) was committed; or
7 (3) is considered by the trier of fact to be a lesser
8 included offense of the offense alleged under Subsection (a).

9 (d) A defendant may not be charged with more than one count
10 under Subsection (a) if all of the specific conduct that is alleged
11 to have been engaged in is alleged to have been committed against a
12 single victim or members of the same household, as defined by
13 Section 71.005, Family Code.

14 (e) An offense under this section is a felony of the third
15 degree.

16 • SECTION 2. Section 22.01(b), Penal Code, is amended to read
17 as follows:

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

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

25 (2) a person whose relationship to or association with
26 the defendant is described by Section 71.0021(b), 71.003, or
27 71.005, Family Code, if it is shown on the trial of the offense that

1 the defendant has been previously convicted of an offense under
2 this chapter, Chapter 19, or Section 20.03, 20.04, ~~[ex]~~ 21.11, or
3 25.11 against a person whose relationship to or association with
4 the defendant is described by Section 71.0021(b), 71.003, or
5 71.005, Family Code;

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

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

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

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

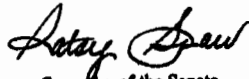
19 (5) a person the actor knows is emergency services
20 personnel while the person is providing emergency services.

21 SECTION 3. The change in law made by this Act applies only
22 to an offense committed on or after the effective date of this Act.
23 An offense committed before the effective date of this Act is
24 covered by the law in effect when the offense was committed, and the
25 former law is continued in effect for that purpose. For purposes of
26 this section, an offense was committed before the effective date of
27 this Act if any element of the offense occurred before that date.

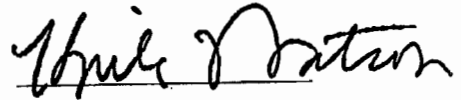
1 SECTION 4. This Act takes effect September 1, 2009.

ADOPTED

MAY 26 2009


Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: 

1 Amend H.B. 2240 by adding an appropriately numbered SECTION
2 to read as follows:

3 SECTION __. Section 261.302, Family Code, is amended by
4 adding Subsection (g) to read as follows:

5 (g) The department, without filing suit, may seek a court
6 order in aid of an investigation under Section 261.303.

7 SECTION __. Section 261.303, Family Code, is amended by
8 amending Subsections (a), (b), and (c) and adding Subsections
9 (c-1), (c-2), (c-3), (f), (g), (h), (i), (j), (k), (l), and (m)
10 to read as follows:

11 (a) A person may not interfere with an investigation of a
12 report of child abuse or neglect conducted by the department or
13 designated agency, and a court may render an order to assist the
14 department in an investigation under this subchapter.

15 (b) If admission to the home, school, or any place where
16 the child may be cannot be obtained, or if consent to transport
17 a child for purposes relating to an interview or investigation
18 cannot be obtained, then, on presentation of an application
19 supported by an affidavit described by Subsection (c-2) that is
20 executed by an investigator or authorized representative of the
21 department, [for good cause shown] the court having family law
22 jurisdiction, including any associate judge designated by the

1 court, may, on finding that the affidavit is sufficient and
2 without prior notice or a hearing, [shall] order the parent, the
3 person responsible for the care of the children, or the person
4 in charge of any place where the child may be to allow entrance,
5 transport of the child, or both entrance and transport for the
6 interview, examination, and investigation.

7 (c) If a parent or person responsible for the child's care
8 does not consent to release of the child's prior medical,
9 psychological, or psychiatric records or to a medical,
10 psychological, or psychiatric examination of the child that is
11 requested by the department or designated agency, then, on
12 presentation of an application supported by an affidavit
13 described by Subsection (c-2) that is executed by an
14 investigator or authorized representative of the department, the
15 court having family law jurisdiction, including any associate
16 judge designated by the court, may, on finding that the
17 affidavit is sufficient and without prior notice or a hearing,
18 [shall, for good cause shown,] order the records to be released
19 or the examination to be made at the times and places designated
20 by the court.

21 (c-1) If a person having possession of records relating to
22 a child that are relevant to an investigation does not consent
23 to the release of the records on the request of the department
24 or designated agency, then, on presentation of an application

1 supported by an affidavit described by Subsection (c-2) that is
2 executed by an investigator or authorized representative of the
3 department, the court having family law jurisdiction, including
4 any associate judge designated by the court, may, on finding
5 that the affidavit is sufficient and without prior notice or a
6 hearing, order the records to be released at the time and place
7 designated by the court.

8 (c-2) An application filed under this section must be
9 accompanied by an affidavit executed by an investigator or
10 authorized representative of the department that states facts
11 sufficient to lead a person of ordinary prudence and caution to
12 believe that:

13 (1) based on information available, a child's
14 physical or mental health or welfare has been or may be
15 adversely affected by abuse or neglect;

16 (2) the requested order is necessary to aid in the
17 investigation; and

18 (3) there is a fair probability that allegations of
19 abuse or neglect will be sustained if the order is issued and
20 executed.

21 (c-3) An application and supporting affidavit used to
22 obtain a court order in aid of an investigation under this
23 section may be filed on any day, including Sunday.

24 (f) A court may designate an associate judge to render an

1 order in aid of an investigation under this section. An order
2 rendered by an associate judge is immediately effective without
3 the ratification or signature of the court making the
4 designation.

5 (g) As soon as practicable after executing the order or
6 attempting to execute the order, as applicable, the department
7 shall file with the clerk of the court that rendered the order a
8 written report stating:

9 (1) the facts surrounding the execution of the order,
10 including the date and time the order was executed and the name
11 of the investigator or authorized representative executing the
12 order; or

13 (2) the reasons why the department was unable to
14 execute the order.

15 (h) A court issuing an order in aid of an investigation
16 under this section shall keep a record of all the proceedings
17 before the court under this subchapter, including a report filed
18 with the court under Subsection (g). The record of proceedings,
19 including any application and supporting affidavit presented to
20 the court and any report filed with the court under Subsection
21 (g), is confidential and may only be disclosed as provided by
22 Subsection (i) or Section 261.201.

23 (i) If the department files a suit under Chapter 262, the
24 department shall include with its original petition a copy of

1 the record of all the proceedings before the court under this
2 subchapter, including an application and supporting affidavit
3 for an order under this section and any report relating to an
4 order in aid of an investigation.

5 (j) As soon as practicable after the department obtains
6 access to records of a child under an order in aid of an
7 investigation, the department shall notify the child's parents
8 or another person with legal custody of the child that the
9 department has obtained the records.

10 (k) Access to a confidential record under this subchapter
11 does not constitute a waiver of confidentiality.

12 (l) This section does not prevent a court from requiring
13 notice and a hearing before issuance of an order in aid of an
14 investigation under this section if the court determines that:

15 (1) there is no immediate risk to the safety of the
16 child; and

17 (2) notice and a hearing are required to determine
18 whether the requested access to persons, records, or places or
19 to transport the child is necessary to aid in the investigation.

20 (m) A court's denial of a request for an ex parte order
21 under this section does not prevent the issuance of a criminal
22 warrant.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

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

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

IN RE: HB2240 by Lewis (Relating to creating the offense of continuous violence against the family.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of continuous violence against the family (family member, household member, or person with whom the offender is in a dating relationship). The offense would be punishable as a felony of the third degree. The bill would also amend the Penal Code by making the offense of assault punishable as a felony of the third degree if it is shown on the trial of the offense the defendant has been previously convicted of the newly created offense of continuous violence against the family.

It is assumed the number of persons convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

The bill would also amend various sections of the Family Code relating to the investigation of child abuse and neglect. The Department of Family and Protective Services reports that most of the provisions are consistent with current casework practice and indicates that the additional step of filing reports with the court regarding utilization of each granted court order would impose additional workload but will not have a significant fiscal impact.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

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

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

IN RE: HB2240 by Lewis (Relating to creating the offense of continuous violence against the family.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of continuous violence against the family (family member, household member, or person with whom the offender is in a dating relationship). The offense would be punishable as a felony of the third degree. The bill would also amend the Penal Code by making the offense of assault punishable as a felony of the third degree if it is shown on the trial of the offense the defendant has been previously convicted of the newly created offense of continuous violence against the family.

It is assumed the number of persons convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 16, 2009

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

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

IN RE: HB2240 by Lewis (Relating to creating the offense of continuous violence against the family.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of continuous violence against the family. The offense would be punishable as a felony of the third degree. The bill would also amend the Penal Code by making the offense of assault punishable as a felony of the third degree if it is shown on the offense that the defendant has been previously convicted of the newly created offense of continuous violence against the family.

It is assumed that the number of persons convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 20, 2009

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

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

IN RE: HB2240 by Lewis (Relating to creating an offense for serial domestic violence.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of serial domestic violence. The offense would be punishable as a felony of the third degree.

It is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, TP

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

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

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

IN RE: HB2240 by Lewis (Relating to creating the offense of continuous violence against the family.), **As Engrossed**

The bill would amend the Penal Code by creating the offense of continuous violence against the family (family member, household member, or person with whom the offender is in a dating relationship). The offense would be punishable as a felony of the third degree. The bill would also amend the Penal Code by making the offense of assault punishable as a felony of the third degree if it is shown on the trial of the offense the defendant has been previously convicted of the newly created offense of continuous violence against the family.

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.

The impact of the bill on correctional populations would depend on how many persons would be prosecuted under the provision of the bill, and the extent to which punishment would be enhanced under the proposed statute compared to existing statute. It is assumed the number of persons convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Source Agencies:

LBB Staff: JOB, GG, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

April 16, 2009

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

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

IN RE: HB2240 by Lewis (Relating to creating the offense of continuous violence against the family.), **Committee Report 1st House, Substituted**

The bill would amend the Penal Code by creating the offense of continuous violence against the family. The offense would be punishable as a felony of the third degree. The bill would also amend the Penal Code by making the offense of assault punishable as a felony of the third degree if it is shown on the offense that the defendant has been previously convicted of the newly created offense of continuous violence against the family.

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.

The impact of the bill on correctional populations would depend on how many persons would be prosecuted under the provision of the bill, and the extent to which punishment would be enhanced under the proposed statute compared to existing statute. It is assumed that the number of persons convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Source Agencies:

LBB Staff: JOB, GG

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

March 20, 2009

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

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

IN RE: HB2240 by Lewis (Relating to creating an offense for serial domestic violence.), **As Introduced**

The bill would amend the Penal Code by creating the offense of serial domestic violence. The offense would be punishable as a felony of the third degree.

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.

The impact of the bill on correctional populations would depend on how many persons would be prosecuted under the provision of the bill, and the extent to which punishment would be enhanced under the proposed statute compared to existing statute. For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG

