

**House Bill 2240**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

(1) is charged in the alternative;

(2) occurred outside the period in which the offense

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alleged under Subsection (a) was committed; or  
(3) is considered by the trier of fact to be a lesser  
included offense of the offense alleged under Subsection  
(a).

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

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

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

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

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

(2) a person whose relationship to or association with  
the defendant is described by Section 71.0021(b),  
71.003, or 71.005, Family Code, if it is shown on the  
trial of the offense that the defendant has been previously  
convicted of an offense under this chapter, Chapter 19, or

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Section 20.03, 20.04, [~~or~~] 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

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

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

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

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

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

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

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effective date of this Act if any element of the offense occurred before that date.		
SECTION 4. This Act takes effect September 1, 2009.	Same as House version.	
	The following rows were presented as similar to the language in the engrossed version of Senate Bill 1064 relating to the investigation of child abuse or neglect.	
No equivalent provision.	SECTION __. Section 261.302, Family Code, is amended by adding Subsection (g) to read as follows: <u>(g) The department, without filing suit, may seek a court order in aid of an investigation under Section 261.303.</u>	
No equivalent provision.	SECTION __. Subsection 261.303, Family Code, is amended by adding Subsections (a), (b), and (c) and adding Subsections (c-1), (c-2), (c-3), (f), (g), (h), (i), (j), (k), (l), and (m) to read as follows: (a) A person may not interfere with an investigation of a report of child abuse or neglect conducted by the department or designated agency, <u>and a court may render an order to assist the department in an investigation under this subchapter.</u> (b) If admission to the home, school, or any place where the child may be cannot be obtained, <u>or if consent to</u>	

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transport a child for purposes relating to an interview or investigation cannot be obtained, then, on presentation of an application supported by an affidavit described by Subsection (c-2) that is executed by an investigator or authorized representative of the department, [for good cause shown] the court having family law jurisdiction, including any associate judge designated by the court, may, on finding that the affidavit is sufficient and without prior notice or a hearing, [shall] order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance, transport of the child, or both entrance and transport for the interview, examination, and investigation.

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

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(c-1) If a person having possession of records relating to a child that are relevant to an investigation does not consent to the release of the records on the request of the department or designated agency, then on presentation of an application supported by an affidavit described by Subsection (c-2) that is executed by an investigator or authorized representative of the department, the court having family law jurisdiction, including any associate judge designated by the court, may, on finding that the affidavit is sufficient and without prior notice or a hearing, order the records to be released at the time and place designated by the court.

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

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

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

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

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

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

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

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

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

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

(h) A court issuing an order in aid of an investigation under this section shall keep a record of all the proceedings before the court under this subchapter, including a report filed with the court under Subsection

(g). The record of proceedings, including any application and supporting affidavit presented to the court and any report filed with the court under Subsection (g), is confidential and may only be disclosed as provided by Subsection (i) or Section 261.201.

(i) If the department files a suit under Chapter 262, the department shall include with its original petition a copy of the record of all the proceedings before the court under this subchapter, including an application and supporting affidavit for an order under this section and any report relating to an order in aid of an investigation.

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

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

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

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

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

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