

By: Powell

S.B. No. 993

A BILL TO BE ENTITLED

AN ACT

relating to increasing criminal penalties for certain family violence offenses committed in the presence of a child.

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

SECTION 1. Section 22.01(b-2), Penal Code, as added by Chapter 34 (S.B. 1576), Acts of the 85th Legislature, Regular Session, 2017, is redesignated as Section 22.01(b-3), Penal Code, to read as follows:

(b-3) [~~(b-2)~~] Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:

(1) the offense is committed 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;

(2) 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 Section 20.03, 20.04, or 21.11 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; and

(3) the offense is 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.

SECTION 2. Section 22.01, Penal Code, is amended by adding

1 Subsections (b-4) and (b-5) and amending Subsection (f) to read as
2 follows:

3 (b-4) Notwithstanding Subsection (b) and except as provided
4 by Subsection (b-5), unless the conduct is punishable under
5 Subsection (b)(2) or (b-3), an offense under Subsection (a)(1) is a
6 state jail felony if:

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

10 (2) the offense is committed in the physical presence
11 or within the hearing of a person who is younger than 18 years of
12 age; and

13 (3) at the time of the offense, the actor knows or has
14 reason to know that the person who is younger than 18 years of age is
15 present and may see or hear the offense.

16 (b-5) The enhancement provided by Subsection (b-4) does not
17 apply if all persons present at the time of the commission of the
18 offense, other than children present during that time, were
19 arrested in connection with that offense.

20 (f) For the purposes of Subsections (b)(2)(A) and (b-3)(2)
21 [~~(b-2)(2)~~]:

22 (1) a defendant has been previously convicted of an
23 offense listed in those subsections committed against a person
24 whose relationship to or association with the defendant is
25 described by Section 71.0021(b), 71.003, or 71.005, Family Code, if
26 the defendant was adjudged guilty of the offense or entered a plea
27 of guilty or nolo contendere in return for a grant of deferred

1 adjudication, regardless of whether the sentence for the offense
2 was ever imposed or whether the sentence was probated and the
3 defendant was subsequently discharged from community supervision;
4 and

5 (2) a conviction under the laws of another state for an
6 offense containing elements that are substantially similar to the
7 elements of an offense listed in those subsections is a conviction
8 of the offense listed.

9 SECTION 3. Section 22.02, Penal Code, is amended by
10 amending Subsection (b) and adding Subsection (b-1) to read as
11 follows:

12 (b) An offense under this section is a felony of the second
13 degree, except that the offense is a felony of the first degree if:

14 (1) the actor uses a deadly weapon during the
15 commission of the assault and causes serious bodily injury to a
16 person whose relationship to or association with the defendant is
17 described by Section 71.0021(b), 71.003, or 71.005, Family Code;

18 (2) regardless of whether the offense is committed
19 under Subsection (a)(1) or (a)(2), the offense is committed:

20 (A) by a public servant acting under color of the
21 servant's office or employment;

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

27 (C) in retaliation against or on account of the

1 service of another as a witness, prospective witness, informant, or
2 person who has reported the occurrence of a crime; [~~or~~]

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

6 (E) against a person whose relationship to or
7 association with the defendant is described by Section 71.0021(b),
8 71.003, or 71.005, Family Code, and:

9 (i) the offense is committed in the
10 physical presence or within the hearing of a person who is younger
11 than 18 years of age; and

12 (ii) at the time of the offense, the actor
13 knows or has reason to know that the person who is younger than 18
14 years of age is present and may see or hear the offense; or

15 (3) the actor is in a motor vehicle, as defined by
16 Section 501.002, Transportation Code, and:

17 (A) knowingly discharges a firearm at or in the
18 direction of a habitation, building, or vehicle;

19 (B) is reckless as to whether the habitation,
20 building, or vehicle is occupied; and

21 (C) in discharging the firearm, causes serious
22 bodily injury to any person.

23 (b-1) The enhancement provided by Subsection (b)(2)(E) does
24 not apply if all persons present at the time of the commission of
25 the offense, other than children present during that time, were
26 arrested in connection with that offense.

27 SECTION 4. The changes in law made by this Act apply only to

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

7 SECTION 5. To the extent of any conflict, this Act prevails
8 over another Act of the 86th Legislature, Regular Session, 2019,
9 relating to nonsubstantive additions to and corrections in enacted
10 codes.

11 SECTION 6. This Act takes effect September 1, 2019.