

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009  
Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2240 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jane Nelson  
Sen. Jane Nelson

Dan Patrick  
Sen. Dan Patrick

Kel Seliger  
Sen. Kel Seliger

Florence Shapiro  
Sen. Florence Shapiro

John Whitmire  
On the part of the Senate  
Sen. John Whitmire

Troy Lewis  
Rep. Troy Lewis

Joe Moody  
Rep. Joe Moody

Ryan Guillen  
Rep. Ryan Guillen

Donna Howard  
Rep. Donna Howard

Allen Vawter  
On the part of the House  
Rep. Allen Vawter

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 2240

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to creating the offense of continuous violence against the  
3 family.

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

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

7 Sec. 25.11. CONTINUOUS VIOLENCE AGAINST THE FAMILY. (a) A  
8 person commits an offense if, during a period that is 12 months or  
9 less in duration, the person two or more times engages in conduct  
10 that constitutes an offense under Section 22.01(a)(1) against  
11 another person or persons whose relationship to or association with  
12 the defendant is described by Section 71.0021(b), 71.003, or  
13 71.005, Family Code.

14 (b) If the jury is the trier of fact, members of the jury are  
15 not required to agree unanimously on the specific conduct in which  
16 the defendant engaged that constituted an offense under Section  
17 22.01(a)(1) against the person or persons described by Subsection  
18 (a) or the exact date when that conduct occurred. The jury must  
19 agree unanimously that the defendant, during a period that is 12  
20 months or less in duration, two or more times engaged in conduct  
21 that constituted an offense under Section 22.01(a)(1) against the  
22 person or persons described by Subsection (a).

23 (c) A defendant may not be convicted in the same criminal  
24 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, [~~or~~] 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.

**House Bill 2240**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 25, Penal Code, is amended by adding Section 25.11, relating to the offense of continuous violence against the family.

SECTION 2. Section 22.01(b), Penal Code, relating to penalties for an offense of assault, is amended.

SECTION 3. Saving provision.

SECTION 4. Effective date.

No equivalent provision.

No equivalent provision.

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

SECTION 4. Same as House version.

SECTION \_\_. Section 261.302, Family Code, is amended by adding Subsection (g) to read as follows:  
(g) The department, without filing suit, may seek a court order in aid of an investigation under Section 261.303.

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, and a court may render an order to assist the department in an investigation under this subchapter.

(b) If admission to the home, school, or any place where the child may be cannot be obtained, or if consent to transport a child for purposes relating to an interview or investigation cannot be obtained, then, on presentation of

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

SECTION 4. Same as House version.

Same as House version.

Same as House version.

**House Bill 2240**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

(c-1) If a person having possession of records relating to a child that are relevant to an investigation does not

**House Bill 2240**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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 an order in aid of investigation under this section. An order rendered by an associate judge is immediately

**House Bill 2240**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

(j) As soon as practicable after the department obtains access to records of a child under an order in aid of an



**House Bill 2240**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 30, 2009**

**TO:** Honorable David Dewhurst , Lieutenant Governor, Senate  
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. ), **Conference Committee Report**

**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.

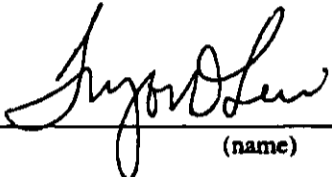
**Source Agencies:** 696 Department of Criminal Justice

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

## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2240 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

  
\_\_\_\_\_  
(name)

May 30, 2009  
(date)