

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Delisi, Brown of Kaufman, Bohac

H.B. No. 126

## A BILL TO BE ENTITLED

### AN ACT

relating to the offense of engaging in organized criminal activity.

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

SECTION 1. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug

1 through forgery, fraud, misrepresentation, or deception;

2 (6) any unlawful wholesale promotion or possession of  
3 any obscene material or obscene device with the intent to wholesale  
4 promote the same;

5 (7) any offense under Subchapter B, Chapter 43,  
6 depicting or involving conduct by or directed toward a child  
7 younger than 18 years of age;

8 (8) any felony offense under Chapter 32;

9 (9) any offense under Chapter 36;

10 (10) any offense under Chapter 34 or 35;

11 (11) any offense under Section 37.11(a); ~~or~~

12 (12) any offense under Chapter 20A; or

13 (13) any offense under Section 37.10.

14 SECTION 2. This Act takes effect September 1, 2007.

# ADOPTED

MAY 15 2007

*Atty Gen*  
Secretary of the Senate

By: *Seliger*

H.B. No. 126

Substitute the following for H.B. No. 126:

By: *Whitman*

C.S. H.B. No. 126

## A BILL TO BE ENTITLED

### AN ACT

relating to the offense of engaging in organized criminal activity.

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

SECTION 1. Section 32.51, Penal Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses:

(1) identifying information of another person without the other person's consent; or

(2) without legal authorization, information concerning a deceased person that would be identifying information of that person were that person alive [~~and with intent to harm or defraud another~~].

(b-1) For the purposes of Subsection (b), the actor is presumed to have the intent to harm or defraud another if the actor possesses:

(1) the identifying information of three or more other persons;

(2) information described by Subsection (b)(2) concerning three or more deceased persons; or

(3) information described by Subdivision (1) or (2) concerning three or more persons or deceased persons.

SECTION 2. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child

1 younger than 18 years of age;

2 (8) any felony offense under Chapter 32;

3 (9) any offense under Chapter 36;

4 (10) any offense under Chapter 34 or 35;

5 (11) any offense under Section 37.11(a); ~~[ex]~~.

6 (12) any offense under Chapter 20A; or

7 (13) any offense under Section 37.10.

8 SECTION 3. This Act applies only to an offense committed on  
9 or after the effective date of this Act. An offense committed  
10 before the effective date of this Act is covered by the law in  
11 effect at the time the offense was committed, and the former law is  
12 continued in effect for that purpose. For the purposes of this  
13 section, an offense was committed before the effective date of this  
14 Act if any element of the offense was committed before that date.

15 SECTION 4. This Act takes effect September 1, 2007.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 4, 2007

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

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

**IN RE: HB126** by Delisi (Relating to the offense of engaging in organized criminal activity. ),  
**Committee Report 2nd House, Substituted**

**The probable impact of implementing the bill cannot be determined due to the unavailability of reliable data or information related to the circumstances involved in the offense of tampering with a governmental record.**

The bill would amend the Penal Code by adding tampering with a governmental record as one of the offenses for which a person can commit the offense of engaging in organized criminal activity. The offense of tampering with a governmental record currently is punishable as a Class A misdemeanor, a state jail felony, a felony of the third degree, or a felony of the second degree, depending on the type of record involved in the offense and the intent to defraud or harm another.

The engaging in organized criminal activity provision of the Penal Code allows for the enhancement of the penalty for included offenses. By including the offense of tampering with a governmental record in the engaging in organized criminal activity provision, the bill would allow for the possibility of increasing the punishment to the next level. 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. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. In fiscal year 2006, 105 admissions to the institutional division, 107 admissions to state jail, and 1,167 additions to felony community supervision, were convicted of the offense of tampering with governmental records. Assuming the same number of offenders in future years, the additional impact to criminal justice populations from the bill would vary greatly depending on the assumption regarding the number of times the enhancement provision would be applied. A check of TDCJ 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 the use of the enhancement assumption; therefore, the probable impact of implementing the bill cannot be determined.

The bill would also amend the Penal Code to include obtaining, possessing, transferring, or using without legal authorization identifying information concerning a deceased person for the conditions regarding the offense of fraudulent use or possession of a person's identifying information. The offense of fraudulent use or possession of identifying information is punishable as a state jail felony. The bill would define intent to harm or defraud another as the possession of: 1) identifying information of three or more other persons without consent, 2) identifying information of three or more deceased persons without legal authorization, or 3) identifying information of three or more persons without consent or deceased persons without legal authorization. It is assumed that this provision of the bill would not significantly affect the operations of state or local government.

### Local Government Impact

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

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

**LBB Staff:** JOB, TM, ES, GG

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 27, 2007

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

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

**IN RE: HB126** by Delisi (Relating to the offense of engaging in organized criminal activity.), **As Engrossed**

**The probable impact of implementing the bill cannot be determined due to the unavailability of reliable data or information related to the circumstances involved in the offense of tampering with a governmental record.**

The bill would amend the Penal Code by adding tampering with a governmental record as one of the offenses for which a person can commit the offense of engaging in organized criminal activity. The offense of tampering with a governmental record currently is punishable as a Class A misdemeanor, a state jail felony, a felony of the third degree, or a felony of the second degree, depending on the type of record involved in the offense and the intent to defraud or harm another.

The engaging in organized criminal activity provision of the Penal Code allows for the enhancement of the penalty for included offenses. By including the offense of tampering with a governmental record in the engaging in organized criminal activity provision, the bill would allow for the possibility of increasing the punishment to the next level. 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. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. In fiscal year 2006, 105 admissions to the institutional division, 107 admissions to state jail, and 1,167 additions to felony community supervision, were convicted of the offense of tampering with governmental records. Assuming the same number of offenders in future years, the additional impact to criminal justice populations from the bill would vary greatly depending on the assumption regarding the number of times the enhancement provision would be applied. A check of TDCJ 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 the use of the enhancement assumption; therefore, the probable impact of implementing the bill cannot be determined.

### Local Government Impact

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

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

**LBB Staff:** JOB, ES, GG

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**February 26, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

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

**IN RE: HB126** by Delisi (Relating to the offense of engaging in organized criminal activity.), **As Introduced**

**The probable impact of implementing the bill cannot be determined due to the unavailability of reliable data or information related to the circumstances involved in the offense of tampering with a governmental record.**

The bill would amend the Penal Code by adding tampering with a governmental record as one of the offenses for which a person can commit the offense of engaging in organized criminal activity. The offense of tampering with a governmental record currently is punishable as a Class A misdemeanor, a state jail felony, a felony of the third degree, or a felony of the second degree, depending on the type of record involved in the offense and the intent to defraud or harm another.

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**Local Government Impact**

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

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

**LBB Staff:** JOB, ES, GG



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 4, 2007**

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

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

**IN RE: HB126** by Delisi (Relating to the offense of engaging in organized criminal activity. ),  
**Committee Report 2nd House, Substituted**

The bill would amend the Penal Code by adding tampering with a governmental record as one of the offenses for which a person can commit the offense of engaging in organized criminal activity. The offense of tampering with a governmental record currently is punishable as a Class A misdemeanor, a state jail felony, a felony of the third degree, or a felony of the second degree, depending on the type of record involved in the offense and the intent to defraud or harm another.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed \$10,000.

A third degree felony 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 second degree felony 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.

The engaging in organized criminal activity provision of the Penal Code allows for the enhancement of the penalty for included offenses. By including the offense of tampering with a governmental record in the engaging in organized criminal activity provision, the bill would allow for the possibility of increasing the punishment to the next level. 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. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. In fiscal year 2006, 105 admissions to the institutional division, 107 admissions to state jail, and 1,167 additions to felony community supervision, were convicted of the offense of tampering with governmental records. Assuming the same number of offenders in future years, the additional impact to criminal justice populations from the bill would depend on the number of times the enhancement provision would be applied. The probable impact of implementing this provision of the bill cannot be determined due to the unavailability of reliable data or information related to the circumstances involved in the offense of tampering with a governmental record.

The bill would also amend the Penal Code to include obtaining, possessing, transferring, or using without legal authorization identifying information concerning a deceased person for the conditions regarding the offense of fraudulent use or possession of a person's identifying information. The offense of fraudulent use or possession of identifying information is punishable as a state jail felony. The bill would define intent to harm or defraud another as the possession of: 1) identifying information of three or more other persons without consent, 2) identifying information of three or more deceased persons without legal authorization, or 3) identifying information of three or more persons without consent or deceased persons without legal authorization. No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from this provision of the bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, TM, GG

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**April 27, 2007**

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

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

**IN RE: HB126** by Delisi (Relating to the offense of engaging in organized criminal activity.), **As Engrossed**

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**LBB Staff:** JOB, GG

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**February 27, 2007**

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**LBB Staff:** JOB, GG