

BILL ANALYSIS

C.S.H.B. 3060
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that witness tampering in family violence cases represents one of the most prevalent and dangerous types of witness tampering and that violent offenders often coerce and outright force victims to refrain from testifying in a criminal case involving family violence. The U.S. Supreme Court has upheld the concept of forfeiture by wrongdoing in providing that certain offenders who cause victims to not be present at trial should not benefit from this wrongdoing and that, if this occurs, statements made out of court that are otherwise inadmissible as evidence in the case may be admitted to prove guilt. However, the parties note, Texas has not established clear statutes that fully explain how to litigate this issue. To address these concerns, C.S.H.B. 3060 establishes penalties and procedures for evidence in the prosecution for witness tampering involving family violence and sets out provisions related to forfeiture by wrongdoing.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3060 amends the Penal Code to make a tampering with a witness offense the greater of a third degree felony or the most serious offense charged in the criminal case if the underlying official proceeding involves family violence. The bill makes such an offense the greater of a second degree felony or the most serious offense charged in the criminal case if the underlying proceeding involves family violence and it is shown at the trial of the offense that the defendant has previously been convicted of an offense involving family violence under Texas laws or another state's laws. The bill specifies that a person is considered to coerce a witness or prospective witness, for purposes of conduct constituting the offense of tampering with a witness, if the person commits an act of family violence that is perpetrated, in part, with the intent to cause the witness's or prospective witness's unavailability or failure to comply and the offense is punishable under the bill's provisions as the greater of a third degree felony, second degree felony, or the most serious offense charged in the criminal case, as applicable.

C.S.H.B. 3060 amends the Code of Criminal Procedure to authorize a party to the prosecution of a tampering with a witness offense in which the underlying official proceeding involved family violence or in which the actor is alleged to have committed the offense by committing an act of family violence against a witness or prospective witness, subject to the Texas Rules of Evidence and other applicable law, to offer testimony or evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor's conduct coerced the witness or prospective witness, including the nature of the relationship between the actor and such witness.

C.S.H.B. 3060 prohibits a party to a criminal case who wrongfully procures the unavailability of a witness or prospective witness from benefiting from the wrongdoing by depriving the trier of fact of relevant evidence and testimony and specifies that such a party forfeits the party's right to

object to the admissibility of evidence or statements based on the unavailability of the witness through forfeiture by wrongdoing. The bill establishes that evidence and statements related to a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of a witness or prospective witness are admissible and may be used by the offering party to make a showing of forfeiture by wrongdoing. The bill requires a court, in determining the admissibility of such evidence or statements, to determine, out of the jury's presence, whether forfeiture by wrongdoing occurred by a preponderance of the evidence and, if practicable, to make such a determination before trial using statutory pretrial procedures and procedures under Rule 104, Texas Rules of Evidence.

C.S.H.B. 3060 does not require the party offering the evidence or statements related to a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of a witness or prospective witness to show that the actor's sole intent was to wrongfully cause the witness's or prospective witness's unavailability, that the actor's actions constituted a criminal offense, or that any statements offered are reliable. The bill specifies that a conviction for a tampering with a witness offense or an obstruction or retaliation offense creates a presumption of forfeiture by wrongdoing and that Rule 403, Texas Rules of Evidence, applies to the bill's provisions regarding forfeiture by wrongdoing. The bill's provisions regarding forfeiture by wrongdoing do not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3060 differs from the original in minor or nonsubstantive ways to make technical corrections and by conforming to certain bill drafting conventions.