

BILL ANALYSIS

S.B. 1360
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to the United States Department of Justice, witness intimidation is widespread and increasing. In domestic violence cases, witness tampering is the most common crime. Without the victim's testimony, prosecutors face significant legal and practical barriers to moving forward with a criminal case against the batterer.

The doctrine of "forfeiture of wrongdoing" represents a United States Supreme Court-sanctioned and constitutional tool for holding battering wrongdoers accountable when the batterers' own bad acts have caused the victim's unavailability in court. Texas has not created rules for courts to make this determination, and as a result, this tool is not being utilized to hold batterers accountable.

S.B. 1360 amends the Penal Code as it relates to the punishment of tampering with a witness and the evidence that may be offered to show that offense. Under the provisions of the bill, the punishment for tampering will be enhanced to a second-degree felony from a third-degree felony or the most serious offense charged in the criminal case if the proceeding involves family violence or the defendant has previously been convicted of an offense involving family violence.

As proposed, S.B. 1360 amends current law relating to the punishment for the offense of tampering with a witness and the evidence that may be offered to show that offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 36.05(a), Penal Code, to make nonsubstantive changes.

SECTION 2. Amends Section 36.05, Penal Code, by adding Subsections (e-1), (e-2), and (e-3), as follows:

(e-1) Provides that notwithstanding Subsection (d) (relating to providing that an offense under this section is a felony of the third degree, except that if the official proceeding is part of the prosecution of a criminal case, the offense is the same category of offense as the most serious offense charged in that criminal case), if the underlying official proceeding involves family violence, as defined by Section 71.004 (Family Violence), Family Code, an offense under this section is the greater of a felony of the third degree or the most serious offense charge in the criminal case.

(e-2) Provides that an offense under this section, notwithstanding Subsections (d) and (e-1), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family

Code, and it is shown at the trial of the offense that the defendant has previously been convicted of an offense involving family violence under the laws of this state or another state, is the greater of a felony of the second degree or the most serious offense charged in the criminal case.

(e-3) Provides that for purposes of Subsection (a), a person is considered to coerce a witness or prospective witness if the person commits an act of family violence as defined by Section 71.004, Family Code, 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 Subsection (e-1) or (e-2), as applicable.

SECTION 3. Amends Chapter 38, Code of Criminal Procedure, by adding Articles 38.48 and 38.49, as follows:

Art. 38.48. EVIDENCE IN PROSECUTION FOR TAMPERING WITH WITNESS OR PROSPECTIVE WITNESS INVOLVING FAMILY VIOLENCE. (a) Provides that this article applies to the prosecution of an offense under Section 36.05, Penal Code, in which:

(1) the underlying official proceeding involved family violence, as defined by Section 71.004, Family Code; or

(2) the actor is alleged to have violated Section 36.05, Penal Code, by committing an act of family violence against a witness or prospective witness.

(b) Authorizes each party, in the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, to offer testimony or other 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 the witness or prospective witness.

Art. 38.49. FORFEITURE BY WRONGDOING. (a) Provides that a party to a criminal case who wrongfully procures the unavailability of a witness or prospective witness:

(1) may not benefit from the wrongdoing by depriving the trier of fact of relevant evidence and testimony; and

(2) forfeits the party's right to object to the admissibility of evidence or statements based on the unavailability of the witness as provided by this article through forfeiture by wrongdoing.

(b) Provides 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 under this article, subject to Subsection (c).

(c) Requires the court, in determining the admissibility of the evidence or statements described by Subsection (b), to determine, out of the presence of the jury, whether forfeiture by wrongdoing occurred by a preponderance of the evidence. Requires the court, if practicable, to make the determination under this subsection before trial using the procedures under Article 28.01 (Pre-Trial) of this code and Rule 104, Texas Rules of Evidence.

(d) Provides that the party offering the evidence or statements described by Subsection (b) is not required to show that:

(1) the actor's sole intent was to wrongfully cause the witness's or prospective witness's unavailability;

(2) the actions of the actor constituted a criminal offense; or

(3) any statements offered are reliable.

(e) Provides that a conviction for an offense under Section 36.05 or 36.06 (Instructed by the Court), Penal Code, creates a presumption of forfeiture by wrongdoing under this article.

(f) Provides that Rule 403, Texas Rules of Evidence, applies to this article. Provides that this article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

SECTION 4. Makes application of this Act prospective.

EFFECTIVE DATE

Effective date: September 1, 2013.