

By: Dutton

H.B. No. 821

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for the offense of tampering with or fabricating physical evidence.

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

SECTION 1. Section 37.09, Penal Code, is amended to read as follows:

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, the person [~~he~~]:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) A person commits an offense if the person:

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of, or official proceeding related to, the offense; or

(2) observes a human corpse under circumstances in

1 which a reasonable person would believe that an offense had been
2 committed, knows or reasonably should know that a law enforcement
3 agency is not aware of the existence of or location of the corpse,
4 and fails to report the existence of and location of the corpse to a
5 law enforcement agency.

6 (c) This section shall not apply if the record, document, or
7 thing concealed is privileged or is the work product of the parties
8 to the investigation or official proceeding.

9 (d) It is a defense to prosecution under Subsection (a) or
10 (b)(1) that the record, document, or thing was visual material
11 prohibited under Section 43.261 that was destroyed as described by
12 Subsection (f)(3) of that section.

13 (e) Subject to Subsection (g), an [~~(c)~~ An] offense under
14 Subsection (a) or (b)(1) [~~Subsection (d)(1)]~~ is a felony of the
15 third degree, unless the thing altered, destroyed, or concealed is
16 a human corpse, in which case the offense is a felony of the second
17 degree.

18 (f) An offense under Subsection (b)(2) [~~(d)(2)~~] is a Class A
19 misdemeanor.

20 (g) An offense under Subsection (a) or (b)(1) is the same
21 category of offense as the most serious offense charged in the case
22 if:

23 (1) the investigation or official proceeding
24 described by Subsection (a) or (b)(1) is part of the prosecution of
25 a criminal case against the defendant; and

26 (2) the most serious offense charged is punishable as
27 a lesser category of offense than the applicable punishment

1 otherwise prescribed by Subsection (e).

2 (h) If conduct that constitutes an offense under this
3 section also constitutes an offense under any other law, the actor
4 may be prosecuted under this section, the other law, or both.

5 (i) [~~(c-1)~~ It is a defense to prosecution under Subsection
6 (a) or (d)(1) that the record, document, or thing was visual
7 material prohibited under Section 43.261 that was destroyed as
8 described by Subsection (f)(3)(B) of that section.

9 [(d) A person commits an offense if the person:

10 [(1) knowing that an offense has been committed,
11 alters, destroys, or conceals any record, document, or thing with
12 intent to impair its verity, legibility, or availability as
13 evidence in any subsequent investigation of or official proceeding
14 related to the offense; or

15 [(2) observes a human corpse under circumstances in
16 which a reasonable person would believe that an offense had been
17 committed, knows or reasonably should know that a law enforcement
18 agency is not aware of the existence of or location of the corpse,
19 and fails to report the existence of and location of the corpse to a
20 law enforcement agency.

21 [(e)] In this section, "human corpse" has the meaning
22 assigned by Section 42.08.

23 SECTION 2. The change in law made by this Act applies only
24 to an offense committed on or after the effective date of this Act.
25 An offense committed before the effective date of this Act is
26 governed by the law in effect on the date the offense was committed,
27 and the former law is continued in effect for that purpose. For

1 purposes of this section, an offense was committed before the
2 effective date of this Act if any element of the offense occurred
3 before that date.

4 SECTION 3. This Act takes effect September 1, 2013.