

By: Herrero

H.B. No. 3060

Substitute the following for H.B. No. 3060:

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C.S.H.B. No. 3060

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for the offense of tampering with a witness and the evidence that may be offered to show that offense.

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

SECTION 1. Subsection (a), Section 36.05, Penal Code, is amended to read as follows:

(a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding, or he coerces a witness or a prospective witness in an official proceeding:

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

(e-1) Notwithstanding Subsection (d), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family Code, an offense under this section is the greater of:

(1) a felony of the third degree; or

(2) the most serious offense charged in the criminal case.

(e-2) 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

1 an offense involving family violence under the laws of this state or  
2 another state, an offense under this section is the greater of:

- 3 (1) a felony of the second degree; or  
4 (2) the most serious offense charged in the criminal  
5 case.

6 (e-3) For purposes of Subsection (a), a person is considered  
7 to coerce a witness or prospective witness if the person commits an  
8 act of family violence as defined by Section 71.004, Family Code,  
9 that is perpetrated, in part, with the intent to cause the witness'  
10 or prospective witness' unavailability or failure to comply and the  
11 offense is punishable under Subsection (e-1) or (e-2), as  
12 applicable.

13 SECTION 3. Chapter 38, Code of Criminal Procedure, is  
14 amended by adding Articles 38.48 and 38.49 to read as follows:

15 Art. 38.48. EVIDENCE IN PROSECUTION FOR TAMPERING WITH  
16 WITNESS OR PROSPECTIVE WITNESS INVOLVING FAMILY VIOLENCE. (a)  
17 This article applies to the prosecution of an offense under Section  
18 36.05, Penal Code, in which:

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

21 (2) the actor is alleged to have violated Section  
22 36.05, Penal Code, by committing an act of family violence against a  
23 witness or prospective witness.

24 (b) In the prosecution of an offense described by Subsection  
25 (a), subject to the Texas Rules of Evidence or other applicable law,  
26 each party may offer testimony or other evidence of all relevant  
27 facts and circumstances that would assist the trier of fact in

1 determining whether the actor's conduct coerced the witness or  
2 prospective witness, including the nature of the relationship  
3 between the actor and the witness or prospective witness.

4 Art. 38.49. FORFEITURE BY WRONGDOING. (a) A party to a  
5 criminal case who wrongfully procures the unavailability of a  
6 witness or prospective witness:

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

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

13 (b) Evidence and statements related to a party that has  
14 engaged or acquiesced in wrongdoing that was intended to, and did,  
15 procure the unavailability of a witness or prospective witness are  
16 admissible and may be used by the offering party to make a showing  
17 of forfeiture by wrongdoing under this article, subject to  
18 Subsection (c).

19 (c) In determining the admissibility of the evidence or  
20 statements described by Subsection (b), the court shall determine,  
21 out of the presence of the jury, whether forfeiture by wrongdoing  
22 occurred by a preponderance of the evidence. If practicable, the  
23 court shall make the determination under this subsection before  
24 trial using the procedures under Article 28.01 of this code and Rule  
25 104, Texas Rules of Evidence.

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

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

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

5           (3) any statements offered are reliable.

6           (e) A conviction for an offense under Section 36.05 or  
7 36.06, Penal Code, creates a presumption of forfeiture by  
8 wrongdoing under this article.

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

13           SECTION 4. The change in law made by this Act applies only  
14 to an offense committed on or after the effective date of this Act.  
15 An offense committed before the effective date of this Act is  
16 governed by the law in effect on the date the offense was committed,  
17 and the former law is continued in effect for that purpose. For  
18 purposes of this section, an offense was committed before the  
19 effective date of this Act if any element of the offense occurred  
20 before that date.

21           SECTION 5. This Act takes effect September 1, 2013.