

By: Rodriguez

S.B. No. 1360

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the punishment for the offense of tampering with a
3 witness and the evidence that may be offered to show that offense.

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

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

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

12 (1) to testify falsely;

13 (2) to withhold any testimony, information, document,
14 or thing;

15 (3) to elude legal process summoning him to testify or
16 supply evidence;

17 (4) to absent himself from an official proceeding to
18 which he has been legally summoned; or

19 (5) to abstain from, discontinue, or delay the
20 prosecution of another.

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

23 (e-1) Notwithstanding Subsection (d), if the underlying
24 official proceeding involves family violence, as defined by Section

1 71.004, Family Code, an offense under this section is the greater
2 of:

3 (1) a felony of the third degree; or

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

6 (e-2) Notwithstanding Subsections (d) and (e-1), if the
7 underlying official proceeding involves family violence, as
8 defined by Section 71.004, Family Code, and it is shown at the trial
9 of the offense that the defendant has previously been convicted of
10 an offense involving family violence under the laws of this state or
11 another state, an offense under this section is the greater of:

12 (1) a felony of the second degree; or

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

15 (e-3) For purposes of Subsection (a), a person is considered
16 to coerce a witness or prospective witness if the person commits an
17 act of family violence as defined by Section 71.004, Family Code,
18 that is perpetrated, in part, with the intent to cause the witness's
19 or prospective witness's unavailability or failure to comply and
20 the offense is punishable under Subsection (e-1) or (e-2), as
21 applicable.

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

24 Art. 38.48. EVIDENCE IN PROSECUTION FOR TAMPERING WITH
25 WITNESS OR PROSPECTIVE WITNESS INVOLVING FAMILY VIOLENCE.

26 (a) This article applies to the prosecution of an offense under
27 Section 36.05, Penal Code, in which:

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

3 (2) the actor is alleged to have violated Section
4 36.05, Penal Code, by committing an act of family violence against a
5 witness or prospective witness.

6 (b) In the prosecution of an offense described by Subsection
7 (a), subject to the Texas Rules of Evidence or other applicable law,
8 each party may offer testimony or other evidence of all relevant
9 facts and circumstances that would assist the trier of fact in
10 determining whether the actor's conduct coerced the witness or
11 prospective witness, including the nature of the relationship
12 between the actor and the witness or prospective witness.

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

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

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

22 (b) Evidence and statements related to a party that has
23 engaged or acquiesced in wrongdoing that was intended to, and did,
24 procure the unavailability of a witness or prospective witness are
25 admissible and may be used by the offering party to make a showing
26 of forfeiture by wrongdoing under this article, subject to
27 Subsection (c).

1 (c) In determining the admissibility of the evidence or
2 statements described by Subsection (b), the court shall determine,
3 out of the presence of the jury, whether forfeiture by wrongdoing
4 occurred by a preponderance of the evidence. If practicable, the
5 court shall make the determination under this subsection before
6 trial using the procedures under Article 28.01 of this code and Rule
7 104, Texas Rules of Evidence.

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

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

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

14 (3) any statements offered are reliable.

15 (e) A conviction for an offense under Section 36.05 or
16 36.06, Penal Code, creates a presumption of forfeiture by
17 wrongdoing under this article.

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

22 SECTION 4. The change in law made by this Act applies only
23 to an offense committed on or after the effective date of this Act.
24 An offense committed before the effective date of this Act is
25 governed by the law in effect on the date the offense was committed,
26 and the former law is continued in effect for that purpose. For
27 purposes of this section, an offense was committed before the

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1 effective date of this Act if any element of the offense occurred
2 before that date.

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