

By: Rodriguez  
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S.B. No. 1360

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:

(1) to testify falsely;

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

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

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

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

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

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.