

1-1 By: Rodriguez S.B. No. 1360
1-2 (In the Senate - Filed March 7, 2013; March 18, 2013, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 25, 2013, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 25, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11			X	
1-12	X			
1-13	X			
1-14	X			

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the punishment for the offense of tampering with a
1-18 witness and the evidence that may be offered to show that offense.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Subsection (a), Section 36.05, Penal Code, is
1-21 amended to read as follows:

1-22 (a) A person commits an offense if, with intent to influence
1-23 the witness, he offers, confers, or agrees to confer any benefit on
1-24 a witness or prospective witness in an official proceeding, or he
1-25 coerces a witness or a prospective witness in an official
1-26 proceeding:

1-27 (1) to testify falsely;

1-28 (2) to withhold any testimony, information, document,
1-29 or thing;

1-30 (3) to elude legal process summoning him to testify or
1-31 supply evidence;

1-32 (4) to absent himself from an official proceeding to
1-33 which he has been legally summoned; or

1-34 (5) to abstain from, discontinue, or delay the
1-35 prosecution of another.

1-36 SECTION 2. Section 36.05, Penal Code, is amended by adding
1-37 Subsections (e-1), (e-2), and (e-3) to read as follows:

1-38 (e-1) Notwithstanding Subsection (d), if the underlying
1-39 official proceeding involves family violence, as defined by Section
1-40 71.004, Family Code, an offense under this section is the greater
1-41 of:

1-42 (1) a felony of the third degree; or

1-43 (2) the most serious offense charged in the criminal
1-44 case.

1-45 (e-2) Notwithstanding Subsections (d) and (e-1), if the
1-46 underlying official proceeding involves family violence, as
1-47 defined by Section 71.004, Family Code, and it is shown at the trial
1-48 of the offense that the defendant has previously been convicted of
1-49 an offense involving family violence under the laws of this state or
1-50 another state, an offense under this section is the greater of:

1-51 (1) a felony of the second degree; or

1-52 (2) the most serious offense charged in the criminal
1-53 case.

1-54 (e-3) For purposes of Subsection (a), a person is considered
1-55 to coerce a witness or prospective witness if the person commits an
1-56 act of family violence as defined by Section 71.004, Family Code,
1-57 that is perpetrated, in part, with the intent to cause the witness's
1-58 or prospective witness's unavailability or failure to comply and
1-59 the offense is punishable under Subsection (e-1) or (e-2), as
1-60 applicable.

1-61 SECTION 3. Chapter 38, Code of Criminal Procedure, is

2-1 amended by adding Articles 38.48 and 38.49 to read as follows:

2-2 Art. 38.48. EVIDENCE IN PROSECUTION FOR TAMPERING WITH
2-3 WITNESS OR PROSPECTIVE WITNESS INVOLVING FAMILY VIOLENCE.

2-4 (a) This article applies to the prosecution of an offense under
2-5 Section 36.05, Penal Code, in which:

2-6 (1) the underlying official proceeding involved
2-7 family violence, as defined by Section 71.004, Family Code; or

2-8 (2) the actor is alleged to have violated Section
2-9 36.05, Penal Code, by committing an act of family violence against a
2-10 witness or prospective witness.

2-11 (b) In the prosecution of an offense described by Subsection
2-12 (a), subject to the Texas Rules of Evidence or other applicable law,
2-13 each party may offer testimony or other evidence of all relevant
2-14 facts and circumstances that would assist the trier of fact in
2-15 determining whether the actor's conduct coerced the witness or
2-16 prospective witness, including the nature of the relationship
2-17 between the actor and the witness or prospective witness.

2-18 Art. 38.49. FORFEITURE BY WRONGDOING. (a) A party to a
2-19 criminal case who wrongfully procures the unavailability of a
2-20 witness or prospective witness:

2-21 (1) may not benefit from the wrongdoing by depriving
2-22 the trier of fact of relevant evidence and testimony; and

2-23 (2) forfeits the party's right to object to the
2-24 admissibility of evidence or statements based on the unavailability
2-25 of the witness as provided by this article through forfeiture by
2-26 wrongdoing.

2-27 (b) Evidence and statements related to a party that has
2-28 engaged or acquiesced in wrongdoing that was intended to, and did,
2-29 procure the unavailability of a witness or prospective witness are
2-30 admissible and may be used by the offering party to make a showing
2-31 of forfeiture by wrongdoing under this article, subject to
2-32 Subsection (c).

2-33 (c) In determining the admissibility of the evidence or
2-34 statements described by Subsection (b), the court shall determine,
2-35 out of the presence of the jury, whether forfeiture by wrongdoing
2-36 occurred by a preponderance of the evidence. If practicable, the
2-37 court shall make the determination under this subsection before
2-38 trial using the procedures under Article 28.01 of this code and Rule
2-39 104, Texas Rules of Evidence.

2-40 (d) The party offering the evidence or statements described
2-41 by Subsection (b) is not required to show that:

2-42 (1) the actor's sole intent was to wrongfully cause the
2-43 witness's or prospective witness's unavailability;

2-44 (2) the actions of the actor constituted a criminal
2-45 offense; or

2-46 (3) any statements offered are reliable.

2-47 (e) A conviction for an offense under Section 36.05 or
2-48 36.06, Penal Code, creates a presumption of forfeiture by
2-49 wrongdoing under this article.

2-50 (f) Rule 403, Texas Rules of Evidence, applies to this
2-51 article. This article does not permit the presentation of
2-52 character evidence that would otherwise be inadmissible under the
2-53 Texas Rules of Evidence or other applicable law.

2-54 SECTION 4. The change in law made by this Act applies only
2-55 to an offense committed on or after the effective date of this Act.
2-56 An offense committed before the effective date of this Act is
2-57 governed by the law in effect on the date the offense was committed,
2-58 and the former law is continued in effect for that purpose. For
2-59 purposes of this section, an offense was committed before the
2-60 effective date of this Act if any element of the offense occurred
2-61 before that date.

2-62 SECTION 5. This Act takes effect September 1, 2013.

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