

BILL ANALYSIS

Senate Research Center

H.B. 789
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Criminal Justice
5/14/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, tampering with evidence is a third degree felony. While this is a serious offense in cases involving serious crimes, in situations where an individual disposes of evidence related to a misdemeanor the punishment for that act can exceed the punishment for the original crime. H.B. 789 would address this issue by capping the penalty for tampering with evidence in a misdemeanor case at a Class A misdemeanor to ensure the punishment aligns with the severity of the original charge.

H.B. 789 amends current law relating to the punishment for the criminal offense of tampering with or fabricating physical evidence.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 37.09, Penal Code, by amending Subsections (c) and (c-1) and adding Subsection (c-2), as follows:

(c) Provides that an offense under Subsection (a) (relating to a person committing an offense by tampering with or fabricating physical evidence) or Subsection (d)(1) (relating to an offense of knowing that an offense of tampering with or fabricating physical evidence has been committed) is a felony of the third degree, except that the offense is:

- (1) a felony of the second degree if the thing altered, destroyed, or concealed is a human corpse; and
- (2) a Class A misdemeanor if the thing altered, destroyed, or concealed could be used as evidence in the investigation only of or an official proceeding related to only an offense punishable as a misdemeanor.

Makes a nonsubstantive change.

(c-1) Creates this subsection from existing text. Provides that an offense under Subsection (d)(2) (relating to the failure of a person to report a human corpse to a law enforcement agency) is a Class A misdemeanor.

(c-2) Creates this subsection from existing text. Provides that it is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 (Electronic Transmission of Certain Visual Material Depicting Minor) that was destroyed as described by Subsection (f)(3) (relating to the destruction of visual material after receiving the material from another minor) of that section, rather than Subsection (f)(3)(B).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2021.