

By: Dutton

H.B. No. 747

A BILL TO BE ENTITLED

AN ACT

relating to spoliation of evidence held for use in a criminal proceeding.

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

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.495 to read as follows:

Art. 38.495. SPOILIATION OF EVIDENCE. (a) Except as permitted under other law and subject to Subsection (b), the state shall preserve evidence in the possession, custody, or control of the state and may not permit the destruction, alteration, or loss of that evidence.

(b) Subsection (a) does not apply to a destruction, alteration, or loss of evidence that reasonably occurs in the course of forensic analysis, as that term is defined by Section 2, Article 38.01.

(c) Subject to Subsection (d), evidence and testimony relating to an allegation that the state, by act or omission, caused the destruction, alteration, or loss of evidence held for use in a criminal proceeding are admissible and may be used by the defendant to make a showing of spoliation of evidence under this article.

(d) In determining the admissibility of evidence or testimony relating to an allegation described by Subsection (c), the court shall determine, out of the presence of the jury and by a preponderance of the evidence, whether spoliation of evidence

1 occurred in violation of Subsection (a). If practicable, the court  
2 shall make the determination under this subsection before trial  
3 using the procedures under Article 28.01 of this code and Rule 104,  
4 Texas Rules of Evidence.

5 (e) The party alleging spoliation of evidence in violation  
6 of Subsection (a) is not required to show that:

7 (1) the actor's sole intent was to wrongfully cause the  
8 destruction, alteration, or loss of the evidence; or

9 (2) the actions of the actor constituted a criminal  
10 offense.

11 (f) A conviction for an offense under Section 37.09, Penal  
12 Code, creates a presumption of spoliation of evidence under this  
13 article.

14 (g) If it is shown during a proceeding under Subsection (d)  
15 that the violation of Subsection (a) was intentional, knowing,  
16 reckless, or negligent, at trial the court shall instruct the jury  
17 to presume that the destroyed, altered, or lost evidence would have  
18 been favorable to the defendant and unfavorable to the state.

19 (h) If it is shown during a proceeding under Subsection (d)  
20 that the violation of Subsection (a) was intentional, the court may  
21 impose additional sanctions on the state or dismiss any criminal  
22 charges with prejudice.

23 SECTION 2. The change in law made by this Act applies to a  
24 criminal proceeding that commences on or after the effective date  
25 of this Act. A criminal proceeding that commences before the  
26 effective date of this Act is governed by the law in effect on the  
27 date the proceeding commenced, and the former law is continued in

1 effect for that purpose.

2 SECTION 3. This Act takes effect September 1, 2021.