

## **BILL ANALYSIS**

H.B. 946  
By: Dutton  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Criminal proceedings can be misjudged and prolonged without the state's protection of evidence, because it allows an opportunity for the evidence to be destroyed, altered, or lost. Once evidence has been tampered with, courts may struggle with uncertainty over the confession of spoliation of evidence as it is the responsibility of the trial court, not the jury, to decide whether there is spoliation. In many jurisdictions, an accidental loss of evidence is still grounds for sanction. The state needs to take stronger steps to prevent the spoliation of evidence in order to ensure that parties' cases are not prejudiced and justice is properly administered. H.B. 946 seeks to address this issue by requiring the state to preserve evidence in its possession, custody, or control and setting out court procedures in the event of spoliation of evidence.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 946 amends the Code of Criminal Procedure to require the state to preserve evidence in its possession, custody, or control and to prohibit the state from permitting the destruction, alteration, or loss of such evidence. The bill excepts from that prohibition any destruction, alteration, or loss of evidence that reasonably occurs in the course of forensic analysis.

H.B. 946, for purposes of making a showing of spoliation of evidence held for use in a criminal proceeding, provides for the admissibility and use of evidence and testimony relating to an allegation that the state, by act or omission, caused the destruction, alteration, or loss of the evidence. The bill requires a court, in determining the admissibility, to determine, out of the presence of the jury and by a preponderance of the evidence, whether the spoliation of evidence occurred in violation of the bill's prohibition. If practicable, the court must make the determination before trial using statutory pre-trial procedures and the procedures under the Texas Rules of Evidence. The bill establishes that the party alleging spoliation of evidence is not required to show that the actions of the actor constituted a criminal offense or that the actor's sole intent was to wrongfully cause the destruction, alteration, or loss of the evidence.

H.B. 946 establishes that a conviction for tampering with or fabricating physical evidence creates a presumption of spoliation of evidence under the bill's provisions. The bill requires the court, if it is shown that the spoliation of evidence was intentional, knowing, reckless, or negligent, to instruct the jury to presume that the destroyed, altered, or lost evidence would have

been favorable to the defendant and unfavorable to the state. If it is shown that the violation was intentional, the court may impose additional sanctions on the state or dismiss any criminal charges with prejudice.

H.B. 946 applies to a criminal proceeding that commences on or after the bill's effective date.

**EFFECTIVE DATE**

September 1, 2023.