

By: Jones of Harris

H.B. No. 3677

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation of the criminal offense of prosecutorial
3 misconduct.

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

5 SECTION 1. Chapter 39, Penal Code, is amended by adding
6 Section 39.08 to read as follows:

7 Sec. 39.08. PROSECUTORIAL MISCONDUCT. (a) In this
8 section, "attorney representing the state" means a district
9 attorney, criminal district attorney, or county attorney with
10 criminal jurisdiction.

11 (b) An attorney representing the state commits an offense if
12 the attorney, while discharging the attorney's official duties in
13 the prosecution of a criminal case:

14 (1) with intent to deceive and with knowledge of the
15 statement's meaning, makes a false statement of a fact material to
16 the criminal case to the defendant, the attorney representing the
17 defendant, a witness, or the court;

18 (2) makes, presents, or uses any record, document, or
19 other item as evidence with knowledge of its falsity and with intent
20 to affect the course or outcome of the criminal case;

21 (3) with intent to influence the witness, coerces a
22 witness or a prospective witness in the criminal case to:

23 (A) testify falsely;

24 (B) withhold any testimony, information,

1 document, or item;

2 (C) elude legal process summoning the witness to
3 testify or supply evidence;

4 (D) be absent from an official proceeding to
5 which the witness has been legally summoned; or

6 (E) abstain from, discontinue, or delay the
7 prosecution of another;

8 (4) presents facts or evidence in the criminal case
9 that the attorney knows are inadmissible or prohibited by law;

10 (5) engages in conduct prohibited under Article
11 35.261, Code of Criminal Procedure; or

12 (6) engages in conduct in violation of Article 39.14,
13 Code of Criminal Procedure.

14 (c) An offense under Subsection (b)(1) or (2) is a felony of
15 the third degree, except that if the most serious offense charged in
16 the criminal case being prosecuted by the attorney representing the
17 state during the commission of an offense under this section is a
18 higher category, then the offense under Subsection (b)(1) or (2) is
19 the same category as the most serious offense charged in that
20 criminal case.

21 (d) An offense under Subsections (b)(3) through (6) is the
22 same category as the most serious offense charged in the criminal
23 case being prosecuted by the attorney representing the state during
24 the commission of an offense under this section.

25 (e) Notwithstanding Subsection (c) or (d), if the most
26 serious offense charged in the criminal case being prosecuted by
27 the attorney representing the state during the commission of an

1 offense under this section is a capital felony, the offense under
2 this section is a felony of the first degree.

3 (f) If conduct that constitutes an offense under this
4 section also constitutes an offense under any other law, the actor
5 may be prosecuted only under this section.

6 SECTION 2. The change in law made by this Act applies only
7 to an offense committed on or after the effective date of this Act.
8 An offense committed before the effective date of this Act is
9 governed by the law in effect on the date the offense was committed,
10 and the former law is continued in effect for that purpose. For
11 purposes of this section, an offense was committed before the
12 effective date of this Act if any element of the offense occurred
13 before that date.

14 SECTION 3. This Act takes effect September 1, 2023.