

SUBJECT: Punishment for tampering with governmental records of forensic analyses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 10 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Moody,
Pierson, Vaught, Vo

0 nays

1 absent — Riddle

WITNESSES: For — Terese Buess, Harris County District Attorney's Office; Richard
Magness, Brazoria County District Attorney's Office; (*Registered, but did
not testify*: Marc Chavez, Lubbock County District Attorney's Office;
Edwin Colfax, The Justice Project; Katrina Daniels, Bexar County District
Attorney's Office; Ballard C. Shapleigh, Office of the District Attorney of
El Paso)

Against — None

On — Pat Johnson, Department of Public Safety Crime Laboratory
Service

BACKGROUND: Penal Code, sec. 37.10 makes tampering with a governmental record a
criminal offense and sets a range of punishment, from a class C
misdemeanor (maximum fine of \$500) to a second-degree felony (two to
20 years in prison and an optional fine of up to \$10,000), depending on the
type of record involved and the actor's intent to defraud or harm another
person.

“Tampering” encompasses a wide variety of actions, such as altering or
destroying a record, falsifying or counterfeiting a record, or purchasing or
selling a record for unlawful purposes. In instances involving tampering
with written reports of forensic analyses or reports concerning instruments
used to test physical evidence that may be connected to a crime, the
maximum offense an actor may be charged with is a state-jail felony (180
days to two years in a state jail and an optional fine of up to \$10,000).

DIGEST: HB 1813 would expand the list of third-degree felony offenses (two to 10 years in prison and an optional fine of up to \$10,000) to include tampering with a written governmental report of a medical, chemical, toxicological, ballistic, or other expert examination or testing of physical evidence, and tampering with a written governmental report of certification, inspection, or maintenance of a device used to examine or test physical evidence.

The enhanced penalties would apply only to reports made for the purpose of determining the connection or relevance of physical evidence to a crime.

The bill would take effect September 1, 2009, and apply only to an offense committed on or after that date.

SUPPORTERS SAY: HB 1813 would close a loophole in the law that mistakenly treats tampering with forensic analyses as a lesser offense than tampering with evidence, which is a third-degree felony. In fact, tampering with a government record of forensic analysis and tampering with evidence have the same harmful effects — they waste money and manpower, damage public confidence in the criminal justice system, and result in wrongful convictions and acquittals. The Penal Code should recognize the equally severe nature of these offenses by providing equally stringent penalties.

OPPONENTS SAY: No apparent opposition.

NOTES: The companion bill, SB 1413 by Williams, has been referred to the Senate Criminal Justice Committee.