

SUBJECT: Third-degree felony, tying punishments to crime for witness tampering

COMMITTEE: Criminal Jurisprudence — committee substituted recommended

VOTE: 6 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Zedler

0 nays

3 absent — Christian, Y. Davis, Rodriguez

WITNESSES: For — Brad Hart, Harris County District Attorney's Office; Norman Ruland, Houston Police Department; (*Registered, but did not testify*: Lon Craft, Texas Municipal Police Association; Katrina Daniels, representing Bexar County Criminal District Attorney Susan D. Reed; Jim Jones, San Antonio Police Department; Gary Tittle, Dallas Police Department Chief of Police-David Brown)

Against — Andrea Bos, ACLU of Texas

BACKGROUND: Penal Code, sec. 36.05 makes it a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to tamper with a witness. The offense is committed if a person, with intent to influence a witness, offers, confers, or agrees to confer a benefit on a witness or prospective witness in an official proceeding; or coerces a witness or prospective witness in an official proceeding to:

- testify falsely;
- withhold testimony;
- elude legal process summoning him or her to testify or supply evidence;
- absent himself or herself from an official proceeding to which he or she had been legally summoned; or
- abstain from, discontinue, or delay the prosecution of another.

DIGEST: CSHB 1856 would revise the penalty for tampering with a witness. The crime would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) unless the official proceeding was part of the prosecution for a criminal case, in which case the crime would be the

same category of offense as the most serious offense charged in the case. If the most serious offense was a capital felony, the offense would be a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1856 is needed to better protect witnesses to crimes and to more appropriately punish persons who tamper with witnesses in other proceedings. Currently, intimidating or coercing a witness is a state-jail felony. This punishment can be inappropriate if the crime itself is less than a state-jail felony or higher than a state-jail felony. In serious criminal cases, it especially does little to deter witness tampering. CSHB 1856 would address these problems by raising the penalty for witness tampering and tying punishments for tampering to the underlying crime in criminal cases.

For tampering with witnesses in criminal cases, CSHB 1856 would tie punishments to the seriousness of the underlying crime. This is needed to deter witness tampering in cases of crimes that carry penalties higher than a state jail felony and to adjust the punishment to a lower penalty for witness tampering in cases with punishments less than a state-jail felony. Under current law, a defendant in a capital case might not be deterred by the current penalty of a state-jail felony since the punishment for witness tampering is less than the punishment for the underlying crime. In such cases, defendants might think tampering with a witness was worth the potential penalty. CSHB 1856 might have been useful in protecting a young witness to a Houston gang murder who was killed.

In other noncriminal cases, punishing witness tampering with a third-degree felony would be more appropriate than current law. The necessity of protecting witnesses in legal proceedings warrants the increased penalties. For example, in cases such as child protection proceedings, it is crucial that witnesses not be intimidated. The definitions of witness tampering in current law ensure that the crime applies only to person who try to deter or harm witnesses.

**OPPONENTS  
SAY:**

By applying the same punishment for tampering in criminal cases to the underlying crime, CSHB 1856 would conflate two actions that should not be considered equal.

Raising the penalty for all witness tampering in civil cases to a third-degree felony would be too great a leap from the current state-jail felony. Limited space in Texas prisons would be better reserved for offenders who themselves committed violent crimes.

NOTES:

The committee substitute removed language that would have made it an offense under witness tampering to engage in conduct reasonably designed to cause a witness to testify falsely, withhold testimony, or take other actions in current law.