

SUBJECT: Reducing punishment for evidence tampering in misdemeanor cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut

0 nays

WITNESSES: For — Lindy Borchardt, for Sharen Wilson Tarrant County Criminal District Attorney; (*Registered, but did not testify*: M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Kathy Mitchell, Just Liberty; Alycia Castillo, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project)

Against — None

On — (*Registered, but did not testify*: Thomas Parkinson)

BACKGROUND: Penal Code sec. 37.09 makes tampering with or fabricating evidence a crime. Offenses generally are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000).

Different penalties apply if the evidence is a human corpse, in which case the offense is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). Offenses involving human corpses can be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if they involved failing to report the existence of and location of the corpse to a law enforcement agency under certain circumstances.

DIGEST: HB 789 would reduce the penalty for tampering with evidence to a class A misdemeanor if the evidence altered, destroyed, or concealed was related to a misdemeanor offense.

The bill would take effect September 1, 2021, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 789 would make the punishment for tampering with evidence in misdemeanor cases better fit the crime by reducing the punishment to a misdemeanor.

Currently, in most cases evidence tampering is a third-degree felony, regardless of the original offense. As a result, in some cases the penalty for evidence tampering is greater than the penalty for the original crime. For example, shoplifting can be a misdemeanor, but if someone tried to hide merchandise, that tampering could be a felony. Or, a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) driving while intoxicated offense in which a young person threw a beer can out a window when being pulled over, could result in a felony evidence-tampering charge. HB 789 would address this by aligning the punishment for tampering with evidence in misdemeanor cases with the original crime.

HB 789 is narrowly tailored and would apply only when the original offense was a misdemeanor. It would not reduce the penalty for DWI or any other offense and would apply only to evidence tampering, not to the original offense.

**CRITICS
SAY:**

No concerns identified.