

SUBJECT: Offense for tampering with evidence used in subsequent investigation

COMMITTEE: Criminal Jurisprudence— favorable, without amendment

VOTE: 6 ayes — Place, Talton, Galloway, Keel, Nixon, A. Reyna

0 nays

3 absent — Dunnam, Farrar, Hinojosa

SENATE VOTE: On final passage, March 3 — voice vote

WITNESSES: For — Steve Lyons, Houston Police Department; Al Schorre

Against — None

On — Edmund Heimlich, Informed Citizen

BACKGROUND : It is a criminal offense for a person to alter, destroy or conceal any record, document or thing with intent to impair its verity, legibility or availability as evidence in an investigation or criminal proceeding if the person knows that an investigation or official proceeding is pending or in progress. The offense is a third-degree felony, with a penalty of two to 10 years in prison and an optional fine of up to \$10,000.

DIGEST: SB 160 would make it a criminal offense if, knowing that a criminal offense had been committed, a person altered, destroyed or concealed any record, document or thing with intent to impair its verity, legibility or availability as evidence in any subsequent investigation or official proceeding relating to the offense. The offense would be a third-degree felony.

SB 160 would take effect September 1, 1997.

SUPPORTERS SAY: SB 160 would close a loophole in the current law concerning tampering with evidence. Current law does not cover a person who tampered with evidence before a criminal investigation had begun. For example, a person who did not commit a murder but who later disposed of a murdered body before a criminal investigation had begun would not be covered by the

current law on tampering with evidence. SB 160 would close this loophole by making it an offense to tamper with evidence with intent to impair it as evidence for a subsequent investigation or official proceeding relating to the offense.

SB 160 would apply only to persons who knew that an offense had been committed and persons who had intent to impair the evidence's verity, legibility or availability as evidence, ensuring that persons who come in contact with evidence but were unaware of an offense or of something's use as evidence would not be committing an offense.

OPPONENTS
SAY:

SB 160 would be an overly broad offense. To hold persons responsible for destroying or concealing evidence when there is no investigation pending or in progress, there also should be an explicit requirement that persons know that what they altered was evidence. A person could alter something that later turns out to be evidence without any idea that it later would be important in a criminal investigation.

Although persons would obviously know that a murdered body could later be evidence in a criminal investigation, this would be less clear with other types of evidence such as documents. Also, there should be a requirement that a person know or could reasonably expect a subsequent criminal investigation. It would be too much to expect persons to see into the future — perhaps years later — and anticipate a criminal investigation. Under SB 160 an offense would occur even if the altering of evidence occurred much later than the offense, but before an investigation was even pending.