

- SUBJECT:** Enhanced organized crime penalty for governmental records tampering
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Pena, Vaught, Riddle, Escobar, Mallory Caraway, Pierson, Talton
- 0 nays
- 1 present not voting — Hodge
- 1 absent — Moreno
- WITNESSES:** For — John Brewer, Harris County District Attorney's Office; Henry Garza
- Against — None
- BACKGROUND:** Under Penal Code, sec. 37.10 a person commits the offense of tampering with a governmental record if that person:
- knowingly makes a false entry in, or false alteration of, a governmental record;
 - makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;
 - possesses, sells, or offers to sell a governmental record or a blank governmental record form with the intent that it be used unlawfully;
 - intentionally destroys, conceals, removes or otherwise impairs the verity, legibility, or availability of a governmental record;
 - makes, presents, or uses a governmental record with knowledge of its falsity; or
 - possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

The offense of tampering with a governmental record is punishable as a Class C misdemeanor, Class B misdemeanor, Class A misdemeanor, state jail felony, felony of the third degree, or felony of the second degree,

depending on the type of record involved in the offense and the intent to defraud or harm.

Under Penal Code, sec. 71.02, a person commits the offense of engaging in organized criminal activity if the person commits or conspires to commit certain offenses with the intent to participate in a combination or the profits of a combination. A combination is three or more people collaborating in criminal activities. The penalty for an offense committed as part of organized criminal activity is one category higher than the most serious offense committed. The penalty for conspiring to commit an offense as part of organized criminal activity is of the same degree as the most serious offense the person conspired to commit.

DIGEST: HB 126 would amend Penal Code, sec. 71.02(a) to add tampering with a governmental record to the list of offenses subject to an enhanced penalty when undertaken as part of organized criminal activity.

The bill would take effect September 1, 2007.

SUPPORTERS SAY: HB 126 would allow prosecutors to provide more serious penalties for those involved in the organized business of manufacturing, selling, or using counterfeit identity documents, such as fake driver's licenses, birth certificates, Social Security cards, or passports. Because of the potential for high profits, large-scale criminal organizations increasingly have become involved in schemes involving counterfeit government documents. The bill is designed to help protect the identity and credit of law-abiding Texans who otherwise would be victimized by these criminal activities and provide local prosecutors another tool to combat large-scale document production mills.

In the late 1990s, Immigration and Customs Enforcement contained a business of false documents operated by a Mexican crime family. The business had operations in all 50 states and more than 100 employees. A raid at one of the business's operations by the Los Angeles police resulted in the seizing of false documents with an estimated street value of \$20 million.

HB 126 would discourage people from supplying false documents that could be used to evade arrest warrants, child support obligations, sex offender registration, tax liability, and other laws. The bill also would

address identity theft, a serious and growing crime with more than 26,000 victims in Texas annually. Under HB 126, prosecutors would have a wider range of admissible evidence, and a defendant's criminal activity and its effects could be addressed in their totality.

The bill is designed to protect the identity and credit of Texans and not directly to target those unauthorized to work in the United States. The purchase of false documents by undocumented workers is only one facet of the criminal activity that involves tampering with governmental records. It is intended as a tool to prosecute large-scale document production mills that engage in organized crime, not a few college students making fake IDs.

**OPPONENTS
SAY:**

HB 126 would provide for excessive penalties for nonviolent crimes and in some cases minor infractions by allowing them to be prosecuted as organized criminal activity. Laws already are in place to permit the prosecution of major criminal enterprises. This bill could result in unintended consequences for the "small fish." Using resources to prosecute and confine lower-level criminals would not benefit the state. Under the bill, a few college students who decided to make fake IDs to buy beer could be charged with a state jail felony, which is punishable by confinement for up to two years and/or a fine not to exceed \$10,000.

HB 126 could have a disproportionate effect on undocumented workers. A 2004 report shows that 14 percent of the country's undocumented population lives in Texas. Many criminal mills producing fake documents sell to undocumented workers, and people buying false documents in order to earn a living should not be viewed as part of the criminal enterprise of counterfeiting documents.

Enhancing the penalty for the offense of tampering with a governmental record through the organized crime statute would only compound the problems of the criminal justice system. The American Civil Liberties Union of Texas reports that Texas' nonviolent prison population represents the sixth largest prison system in the nation, and in 2005, Texas incarcerated more than 57,000 people for nonviolent crimes.