

SUBJECT: Defects in indictments and informations

COMMITTEE: Criminal Jurisprudence: favorable, without amendment

VOTE: 7 ayes--Nabers, Burnett, Jones, Maloney, T. Smith, Uher,
Waldrop

0 nays

0 present, not voting

4 absent--Cofer, Hernandez, Hudson, Browder

WITNESSES: None

BACKGROUND: During the regular session, the Senate passed SB 1000, which is identical to HB 112, as reported from committee. The House sponsor of SB 1000, Rep. Jones, accepted a floor amendment by Rep. Maloney specifying that an indictment is sufficient only if it "states" what statute is the basis for the indictment. SB 1000 originally would have allowed any indictment in which it "can be determined" under what statute the pleading is brought. The Senate refused to accept the House amendment, and the bill went to conference committee. The conference committee removed the amendment and the Senate adopted the conference committee report, but the House tabled the conference committee report by 75 to 69 (Journal page 4339).

An amendment is expected to be offered to HB 112 that would allow the defense to require the prosecution to specify the charge in sufficient detail to identify the relevant statute.

DIGEST: Under HB 112, a motion to quash a criminal indictment or information would have to be filed prior to trial. The motion would have to specify the alleged defect. Failure to file a motion would be a "waiver of all matters of form or substance." If no motion to quash were made, an indictment would be sufficient if the statute under which the pleading was brought could be determined and if the defendant was not "misled to his prejudice."

The bill would apply to indictments and informations filed on or after Sept. 1, 1981.

SUPPORTERS
SAY:

If HB 112 is enacted, fewer criminal convictions would be overturned on appeal because of a minor defect in an indictment.

SUPPORTERS

SAY (cont'd): There is no requirement now that a defect in an indictment be pointed out to the court before or during the trial. A defense attorney who spots a possible error can wait until the appeal to complain about it. If the appeals court finds an error in the indictment, the defendant must be re-indicted and retried. This process may cause a delay of two or three years. Sometimes witnesses may no longer be available for the trial, and the defendant must be let free. This system rewards accused criminals and defense attorneys at the public expense.

The bill would expedite justice. It would not take away any of the defendant's rights. Defects in indictments would be found before expensive trials. They could be corrected and the trial could proceed.

A couple of years ago it was discovered that a legally required phrase has been omitted from an indictment form used in Houston. Thousands of indictments were thrown out. This bill would help prevent another such situation.

The regular session amendment would have caused numerous problems. Once the prosecutor had stated the particular statute under which the defendant was charged, it would be impossible to change to even a closely related statute if later developments warranted the change. Further, specifying the particular statute would lead to typographical errors, resulting in more indictments being thrown out. The proposed compromise amendment would fill the defense lawyers' legitimate need to know the crime that is alleged, without unnecessarily tying the hands of the prosecution.

OPPONENTS
SAY:

As worded, the bill would create as many problems as it would solve. The bill covers defects of "form or substance." This is vague wording. It would create a conflict with the Court of Criminal Appeals' recognition of "fundamentally defective" indictments. Under the court's doctrine, if an indictment is fundamentally defective, then all the proceedings that occur after it are void. It is doubtful that this statutory change could take away constitutionally guaranteed rights. Confusion over what the bill means would cause even more appeals. It would be three or four years before the Court of Criminal Appeals began to settle the questions through case-by-case tests.

The bill is an overreaction to the Houston situation. The law should not be changed to excuse sloppy drafting of indictments. It's too late to solve the Houston problem, anyway.

OPPONENTS

SAY (cont'd): Sometimes a defendant is not well represented at trial. His counsel might neglect to object to a indictment. Under HB 112 the defendant would be unable to directly challenge the bad indictment on appeal. Instead, he would have to appeal on the ground of inadequate representation. That is a twisted way to have to get justice.

To protect themselves and their clients, lawyers would typically file a bunch of "form" motions to quash indictments. This would tie up more court time. Even now, busy trial judges sometimes do not throw out questionable indictments because they want to proceed with the trial. The bill would not change this situation.