

5/17/83

SUBJECT: Defective indictments

COMMITTEE: Criminal Jurisprudence: committee substitute recommended

VOTE: 5 ayes--Peveto, T. Smith, Waldrop, Burnett, Granoff  
0 nays  
3 present, not voting--Danburg, Hernandez, S. Hudson  
1 absent--Hury

WITNESSES: (on related bills)

For--Steve Capelle, Texas District and County Attorneys Association

Against--Dain Whitworth, Texas Criminal Defense Lawyers Association

On--Andrew Shuval, Prosecutor Council

BACKGROUND: An indictment is a grand jury's written instrument charging someone with a crime; an information is an alternative charging instrument presented by a prosecutor.

DIGEST: CSHJR 95 would amend the Texas Constitution to say that an indictment or information could not be dismissed, and a conviction could not be reversed or set aside, for any error, defect or irregularity that did not "prejudice a defendant's substantial rights."

The presentment of an indictment or an information, regardless of any technical defects it might have, would by itself give the court jurisdiction in the particular case, assuming the court had jurisdiction to hear the general type of case involved.

The requirement that all prosecutions be carried out "in the name and authority of the State of Texas" and conclude with "against the peace and dignity of the State" would be eliminated from the Constitution. Definitions of indictment and information would be added, with their use and form to be prescribed by statute.

The amendment would be put before the voters on Nov. 8, 1983.

SUPPORTERS  
SAY:

Defendants should be required to raise objections to harmless technical problems with the wording of an indictment or information early enough to correct the problem. CSHJR 95 would make it clear that the Constitution allows the state to make such a rule. The constitutional requirement that defendants have actual notice of the charges against them would not be changed. If defendants wanted to object to the adequacy of notice supplied by the written charges, they would no longer be able to wait to object until the appeals process, when the only remedy is an expensive retrial.

A constitutional amendment is necessary to give clear direction to the Court of Criminal Appeals that technical defects in the charges should not be used to invalidate an entire trial, if they do not adversely affect the defendant's basic rights. The court would no longer be able to overturn a trial that had no substantive defects by finding that a technically defective indictment had divested the trial court of proper jurisdiction in the case.

Too often the Court of Criminal Appeals has decided on its own, without the question ever being raised by the defense, that some technical point unrelated to the defendant's substantial rights requires the conviction to be reversed. The mischief is compounded because these hypertechnical decisions become the basis for challenges in all similar cases. This "trial by technicality" has provoked justifiable public outrage and undermined public confidence in our criminal-justice system. The court has caused hundreds of trials to be voided, with no advance warning to prosecutors of any problem, by deciding, for example, that indictments must refer to "coca leaves" rather than "cocaine," or that theft indictments must say "without the effective consent of the owner."

OPPONENTS  
SAY:

Since the state has overwhelming power against accused citizens, who are presumed innocent until convicted, the least that it should have to do is provide clear notice of the charges. Since pretrial disclosures of the state's case in criminal cases is limited, the indictment or information is often the only notice of the actual charges available. Unless the Legislature is going to require the specific statute the defendant allegedly violated to be cited in the indictment, the formal requirements for the indictment and for the specific allegations in it

OPPONENTS

SAY:

(continued)

should be scrupulously adhered to. Prosecutors should not be rewarded for sloppy drafting.

Defendants are sometimes represented by attorneys who, through inexperience or incompetence, fail to object to a faulty indictment. The Legislature should not amend the Constitution to prohibit the Court of Criminal Appeals from correcting an injustice in such cases. One likely result of this amendment would be motions to quash indictments in every single case, in order to preserve the chances of reversal if an error was later found. This would waste the judges' time and add to the criminal-justice paper glut.

NOTES:

Under HB 1099, by Terral Smith, pending in the Calendars Committee, defendants would waive and forfeit the right to object to a defect, error, or irregularity in the form or substance of an indictment or information if they did not object before the day on which the case was set for trial on the merits. Matters of substance as well as form in an indictment or information could be amended prior to trial. Last session SB 1000, a bill similar to HB 1099, was defeated in the closing days when the House tabled a conference report on the bill by a vote of 75 to 69.