

HOUSE  
STUDY

GROUP bill analysis

5/20/85

HB 13  
(T. Smith, Gibson, et al.)

SUBJECT: Rules of procedure in criminal cases

COMMITTEE: Criminal Jurisprudence: favorable, with amendment

VOTE: 7 ayes--T. Smith, Polumbo, Waldrop, Blackwood, Danburg,  
Morales, Parker

0 nays

2 absent--Hury, Schoolcraft

WITNESSES: For--Stephen Capelle, Texas District and County  
Attorneys Association

Against--None

On--Robert Huttash, state prosecuting attorney

DIGEST: HB 13 would allow the Court of Criminal Appeals  
to promulgate rules of procedure for criminal cases in  
Texas courts. The new rules, and any changes in  
existing rules, would remain in effect unless and until  
disapproved by the Legislature.

The Court of Criminal Appeals could designate as repealed any of 63 provisions of the Code of Criminal Procedure listed in the bill, if the court issued rules in conflict with or in place of those provisions. The listed provisions deal with indictments and informations, complaints, and discovery. If a provision were repealed in part or only to the extent of conflict with a court rule, the court's statement of repeal would have to say what part of the law would stay in effect.

Except for rules affecting the 63 listed provisions, the court's rules of procedure could not abridge, enlarge, or modify the substantive rights of a defendant or conflict with a statute.

The effective date of a rule or amendment would be set by the Court of Criminal Appeals. The court clerk would have to file with the Secretary of State a copy of each rule and amendment and publish them in the State Bar Journal at least 60 days before the effective date. Each member of the Legislature would receive a copy of the new rules or amendments on or before Dec. 1 in the year preceding each regular session. The rules

DIGEST:  
(continued)

and any designations of repeal of Code provisions would be published in the official reports of the Court of Criminal Appeals, which would decide how to print and distribute the rules.

SUPPORTERS  
SAY:

HB 13 would let the Court of Criminal Appeals make necessary changes in rules of criminal procedure, just as the Texas Supreme Court has long been authorized to make changes in civil procedure. The Texas Supreme Court has had this authority since 1941, and it has worked well. Rules of procedure need to adapt as society changes ever faster and the legal system grows ever more complex. The Court of Criminal Appeals, as the highest state court for criminal cases, is in the best position to know what changes are required in the rules for such cases.

The U.S. Congress has long recognized that the U.S. Supreme Court should have the power to set procedural rules in criminal cases in federal court. The elected state Court of Criminal Appeals is equally worthy of trust.

The rules promulgated by the court would not affect an substantive right of criminal defendants except in certain specified areas. These deal mostly with the pretrial phase, affecting the form and content of indictments and other written charges. The Court of Criminal Appeals regularly sees cases in which an otherwise proper conviction must be overturned due to technical error in the wording of the indictment, such as failing to specify that cocaine is "the derivative of coca leaves." With the expertise gained from regularly seeing these types of cases, the court could work out rules for written charges against defendants that would protect their rights yet would avoid costly new trials occasioned by technical mistakes in the wording of the accusations.

The Legislature will of course be free to undo any court-made changes in the rules. But during the 19 months out of every two years when the Legislature is not in regular session, the court needs to be able to change the rules promptly to cope with changed circumstances.

OPPONENTS  
SAY:

The Legislature should not delegate its authority to determine the procedural rights affecting criminal defendants. Unlike the civil rules promulgated by the Texas Supreme Court, these criminal procedures concern

OPPONENTS  
AY:  
(continued)

the methods the state can use to deprive people of their liberty. The Court of Criminal Appeals would be allowed to second-guess the Legislature, repealing legislative enactments and setting its own rules instead. The Legislature would have to pass a new bill to restore the version it had previously passed. For example, the House just passed a bill changing the rights of defendants to obtain evidence from the prosecution. If the Legislature enacts that bill, the Court of Criminal Appeals could modify it any way it wished.

The court should have some regular mechanism for recommending changes to the Legislature in the area of criminal procedure, but it should not be able to make those changes itself.

NOTES:

The committee amendment would eliminate the requirement that every member of the State Bar of Texas be mailed a copy of any rules or amendments promulgated under the bill and instead require that they be published in the State Bar Journal.

SB 354 by Glasgow, allowing the Court of Criminal Appeals to promulgate rules of appellate procedure, and SB 355 by Glasgow, which would allow the court to promulgate rules of evidence in criminal cases, have passed the Senate and are pending in the Calendars Committee.

SJR 16 by Brown, which would grant the Legislature the authority to set procedures concerning indictments and informations, has passed both houses of the Legislature and will be considered by the voters on Nov. 5, 1985.