SUBJECT: Admissibility of evidence in criminal trials

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Talton, Dunnam, Farrar, Galloway, Hinojosa, Keel, Nixon, A. Reyna

0 nays

1 absent — Place

WITNESSES: For — C. Bryan Case, Travis County District Attorneys Office

Against — Keith S. Hampton, Texas Criminal Defense Lawyers Association; Edmund Heimlich, Informed Citizens

On — David P. Weeks, Texas District and County Attorneys Association

DIGEST: CSHB 573 would eliminate the phrase "or other person" from the Code of Criminal Procedure statute that prohibits evidence obtained by an officer "or other person" in violation of the laws or constitutions of Texas or the United States from being admitted as evidence against the accused in a criminal trial.

CSHB 573 would take effect September 1, 1997.

SUPPORTERS SAY: CSHB 573 would return Texas law concerning admitting evidence in criminal trials to the way it had been interpreted for over 50 years until a 1996 court decision. In *Johnson v. State*, No. 610-95, delivered November 20, 1996, the Texas Court of Criminal Appeals interpreted Texas law to exclude from criminal court trials evidence obtained by *any* person, even if the person were not a law enforcement officer or an agent of the government. Previously, the law had been interpreted to mean evidence was excluded only if it were obtained by law enforcement officers or other persons acting in concert with or at the behest of law enforcement officers. The court's interpretation in the *Johnson* case is clearly not the intent of the

original law. These principals are also well established under federal case law interpreting rights guaranteed under the Fourth amendment to the U.S. Constitution.

It would be unreasonable for Texas to exclude from courts evidence if it were obtained by private citizens. This interpretation could lead to an absurd situation in which evidence of child sexual abuse could be suppressed if it were obtained by a burglar who happened upon the evidence while committing burglary. In this situation, there is no violation by the government or agent of the government of the person being tried for child sex abuse, and the evidence should be admissible. CSHB 573 would ensure the fair administration of justice and that criminals are not let off of the hook because of the actions of private persons.

CSHB 573 would not effect the proper use of the exclusionary rule — to protect defendants from unconstitutional searches by the government and government agents and to exclude from court the fruits of illegal government conduct. Law enforcement authorities and agents of the government are required to respect individuals' constitutional rights. If those rights are violated in conjunction with obtaining evidence in a criminal case, the evidence not admissible in court. However, this remedy has not been, and should not be, applied to actions of private persons. Public policy designed to deter misconduct by government agents is not advanced by suppressing evidence obtained by private individuals who are not acting on the behest of the government.

OPPONENTS SAY:

Current law should not be changed because it protects persons from violations of their constitutional rights to be free from unreasonable searches and seizures committed by all persons. The phrase "any other person" should be retained in the law because it protects persons from unlawful searches by private security guards, department store detectives, vigilantes and others. It is the illegal action of a unlawful search and seizure that should make evidence inadmissable in court, not a distinction drawn on the basis of who committed the action. Evidence obtained in violation of a persons' rights should not be admissible in a case against the person, and the state should not benefit from this type of evidence — no matter who obtained it.

CSHB 573 could give a green light to self-appointed crime fighters who may want to gather evidence against a persons.

NOTES:

The original versions of the bill would have established the following exceptions to the rule that certain evidence is not admissible: evidence obtained from a source that is independent of a violation of federal or state law; evidence obtained after an intervening circumstance has occurred that is sufficient to attenuate the taint created by a violation of federal or state law; and evidence that inevitably would have been discovered by lawful means.