

SUBJECT: Allowing local prosecutors to accept federal funds for fraud cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Dunnam, Garcia, Keel, Nixon, Wise

0 nays

3 absent — Green, Smith, Talton

WITNESSES: For — None

Against — None

On — Lonnie Duke, Texas Department of Human Services

BACKGROUND: Government Code, sec. 41.004 prohibits district and county attorneys from accepting compensation from any person for prosecuting cases.

The Texas Department of Human Services (DHS) contracts with local district attorneys to prosecute cases of welfare fraud under a program administered by the U.S. Department of Agriculture (USDA). DHS pays \$628 for every prosecuted case its inspector general refers to district or county attorneys. It pays \$280 for every uncontested case. Payment is made regardless of whether the case is prosecuted as a felony or as a misdemeanor. DHS does not pay for dismissed cases.

In the 1998 case, *State of Texas v. Terrazas*, 970 S.W.2d 157, the El Paso Court of Appeals ruled that dismissal of an indictment with prejudice would not be warranted because the office of the El Paso County district attorney had accepted compensation from DHS. However, the court's ruling said that "any taint could be removed by requiring [the] district attorney to decline payment and then determine whether to prosecute the case."

DIGEST: HB 3249 would stipulate that the prohibition against receiving compensation would not apply to federal funds provided through DHS to local prosecutors' offices for the purpose of defraying part of the cost of prosecutions.

The bill would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

HB 3249 would allow local prosecutorial offices to receive federal funds to help defray the costs of prosecuting fraud cases involving federal welfare benefits. Local prosecutors have been receiving reimbursements from DHS since the mid-1980s. These funds are provided by USDA to help combat welfare fraud. Failure to provide assistance to defray these prosecutions has resulted in an unfunded mandate upon local officials to expend resources defending a federal/state program from fraudulent applications.

HB 3249 would define narrowly this single exception to sec. 41.004, which otherwise would prohibit district and county attorneys from receiving federal funds to prosecute these cases. The bill would not open the door to any other kind of reimbursement or compensation.

If this bill is not enacted, every defendant in a welfare fraud case will be able to claim that prosecutors brought the case only because of monetary benefits to their offices. The bill would head off frivolous appeals based upon the contractual arrangement between DHS and the local prosecutorial office.

Acceptance by local prosecutorial offices of DHS funds for prosecuting welfare fraud cases would not create a bias or cause for dismissing a case because of prejudice. Whether compensation is received or not, people accused of fraud still must be indicted by a grand jury, which receives no compensation and for which payments to the district attorney are of no influence. Local prosecutors have not taken on cases they otherwise might not have taken simply to receive small payments from DHS. Since DHS does not pay for dismissed cases, local prosecutors have no incentive to prosecute cases based on flimsy evidence or to pursue cases in a biased manner.

**OPPONENTS  
SAY:**

The practice of local prosecutors receiving benefits for trying cases should be ended. Compensation, even if slight, places special rewards upon pursuing particular kinds of cases against particular kinds of defendants. Though it may never rise to a level of prosecutorial misconduct that violates a defendant's due-process rights, this practice nonetheless introduces the appearance of bias into the judicial system.