

SUBJECT: Allowing courts to require disclosure of expert witnesses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Green, Keel, Smith, Talton, Wise
2 nays — Dunnam, Garcia
1 absent — Nixon

SENATE VOTE: On final passage, April 13 — voice vote (Shapleigh and West recorded nay)

WITNESSES: (*On House companion bill, HB 2675:*)
None

DIGEST: SB 557 would amend the Code of Criminal Procedure to allow a court in which an action was pending, on motion of a party and on notice to the other parties, to order one or more of the other parties to disclose to the moving party the name and address of each person the other party might use at trial. This authorization would apply to the presentation of evidence under rules relating to expert witness testimony, the basis for expert witness testimony, and disclosure of facts or data underlying expert opinion. The court's order would have to specify the time and manner in which the other party would have to make the disclosure to the moving party.

This bill would take effect September 1, 1999.

SUPPORTERS SAY: The content of expert testimony is becoming increasingly complex and may range from Sudden Infant Death Syndrome to complicated psychological profiles of defendants. Effective cross-examination of expert witnesses often requires long preparation.

Under current law, a prosecutor may not learn that an expert witness could be called to testify until moments before the expert actually is called. The result may be an inadequately prepared cross-examination that does not further the finding of truth. For capital offenses that hinge on complicated facts, the introduction of arcane expert testimony without an effective rebuttal may gut the prosecution's case. SB 557 would level the playing field by authorizing a

court to require that possible expert witnesses be made known in a timely fashion.

The bill also would expedite trials. A prosecutor who learns at the last minute that an expert witness will be called usually requests a continuance to prepare cross-examination. If the court grants the motion, the duration of the trial is extended. SB 557 would help eliminate unnecessary delays by allowing the court to require disclosure in advance of whether expert witnesses may be called, allowing the prosecution time to prepare.

**OPPONENTS
SAY:**

Allowing judges to grant a prosecution motion to force disclosure of any expert witnesses that the defense may plan to call could chill the efforts of defense attorneys to obtain expert testimony. The prosecution has an obligation to prove its case beyond a reasonable doubt, not to rebut the defense. The prosecution already has all the resources of the state at its disposal and should concentrate on proving its case rather preparing a counter-attack against witnesses for the defense.