SUBJECT: Questioning of prospective jurors during voir dire examination

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Ellis, Denny, Hodge, Pena, Talton

0 nays

3 absent — Riddle, Dunnam, P. Moreno

SENATE VOTE: On final passage, May 14 — voice vote

WITNESSES: No public hearing

BACKGROUND: Voir dire is the process by which a jury is chosen from a panel of prospective jurors. During voir dire, each side may ask questions of the panel and may strike people from the panel for certain reasons. Depending on the case, each side is allowed a certain number of peremptory strikes to remove a prospective juror from a panel. Each side may challenge a juror for cause for reasons such as that a juror is biased or prejudiced for or against something relevant to the case.

Code of Criminal Procedure, art. 35.17 governs voir dire examination in criminal cases. Pursuant to the discretion of the court, the state and defendant must conduct voir dire of prospective jurors in the presence of the entire panel. For capital felony cases in which the state seeks the death penalty, the court must inform the panel about the burden of proof in the case, return of the indictment by the grand jury, presumption of innocence, and other issues applicable to the case on trial. Then, upon request by the prosecution or defense, either side may examine each juror on voir dire individually and apart from the entire panel.

A potential juror may be struck for cause if the prosecution or defense asks that person an improper commitment question. A commitment question, as defined by the Texas Court of Criminal Appeals ruling in *Standefer v. State*, 59 S.W.3d 177 (CCA-2001), is one that asks a potential juror to resolve or refrain from resolving an issue in a certain way after learning a particular fact.

The law requires jurors to make certain kinds of commitments, such as that they can adhere to a law that requires them to disregard illegally obtained evidence or to a law that precludes them from holding a defendant's failure to testify against him. In this case, a proper commitment question would have at least one answer that would give rise to a valid challenge for cause. An improper commitment question would not.

DIGEST:

CSSB 1011 would specify that the prosecution and defense are entitled to conduct a meaningful voir dire examination, including the ability to ask questions designed to elicit information necessary for both attorneys to exercise challenges for cause and peremptory challenges intelligently. By way of illustration only, a question asked during voir dire would be proper if it attempted to discover a prospective juror's views on an issue that applied to the case, but a question would not be proper if it attempted to commit a prospective juror to reaching a verdict based on particular facts.

The voir dire statute would not be intended to restrict a judge's authority to limit the duration of a voir dire examination to a reasonable period.

The bill would take effect September 1, 2003.

SUPPORTERS SAY:

CSSB 1011 would clarify what is proper to ask prospective jurors during voir dire. Traditional policy has called for a meaningful voir dire with certain restrictions. Parties never have been allowed to require a juror to commit to a verdict. The purpose of voir dire is to invoke a meaningful discussion between the parties and the potential jury, allowing the parties to get to know the panelists and to discover their biases and prejudices.

The bill would establish that a question is an improper commitment question when it commits a juror to a particular verdict, such that the juror would feel bound to return that verdict. All other questions relevant to an issue would be permitted. The *Standefer* case, by creating a new standard for the kinds of questions that can and cannot be asked, made the process more confusing, because under this ruling, virtually every question could be construed as a commitment question. *Standefer* is so confusing that many judges, attorneys, and defendants ignore the case because they find it too difficult to apply. CSSB 1011 would give judges the flexibility they need with rules regarding voir dire to determine whether or not a question should be allowed.

The bill would give judges, attorneys, and defendants notice of what types of questions can be asked during voir dire. Although the law before *Standefer* was clear, judges and attorneys did not necessarily follow it. This bill would establish a statutory basis that they would have to follow.

CSSB 1011 would save judges time, allowing them to decide cases with due speed rather than becoming bogged down in determining whether or not a question was a proper commitment question.

OPPONENTS SAY:

CSSB 1011 would not resolve the problem raised by *Standefer* but would make the law even more confusing. The bill is so broad that it would not offer a meaningful solution and would result in substantial litigation to determine its meaning.

The bill would give defendants more grounds to file frivolous appeals of convictions based on voir dire questions that could be commitment questions, thereby clogging up the appellate courts. It would make it easier for defendants to have rightful convictions overturned, because a defendant is the only party that can appeal error in jury selection. By broadening the definition of a commitment question, the bill would create more grounds for error.

The bill's language resembles dicta from appellate court cases rather than statutory law. Statutory language inserted "by way of illustration only" would go against the basic tenets of statutory law. Also, the specific examples could overlap, with no indication as to which example would override the other.

NOTES:

The committee substitute added language to specify that:

- questions would be permitted if designed to elicit information necessary for both attorneys to exercise challenges intelligently, and
- the examples of proper and improper questions during voir dire would be "by way of illustration only."

The substitute also removed language that would allow a judge to restrict counsel from engaging in questioning that was overly broad or vague.