

SUBJECT: Discharging alternate juror after verdict and punishment rendered

COMMITTEE: Criminal Jurisprudence — favorable without amendment

VOTE: 6 ayes — Peña, Riddle, Escobar, Hodge, Mallory Caraway, Pierson
0 nays
3 absent — Vaught, Moreno, Talton

WITNESSES: None

BACKGROUND: Code of Criminal Procedure, art. 33.011 authorizes district court judges to impanel up to four jurors as alternate jurors and county court judges to impanel up to two alternate jurors. It also establishes the procedures for replacing regular jurors with alternate jurors and for dismissing alternate jurors. It allows alternate jurors to replace regular jurors prior to the time the jury retires to consider a verdict. Alternate jurors who do not replace regular jurors must be discharged after the jury retires to consider the verdict.

Under Code of Criminal Procedure art. 36.29(c), if a juror dies or becomes disabled after a jury begins deliberations, 11 members can render a verdict and decide punishment, if both the defense and the prosecution agree.

DIGEST: HB 1086 would allow alternate jurors to replace regular jurors anytime prior to the time the jury rendered a verdict or decided punishment. Alternate jurors would be discharged after the jury had rendered a verdict on guilt and innocence and decided punishment.

The bill would take effect September 1, 2007, and would apply to trials that commenced on or after that date.

SUPPORTERS SAY: HB 1086 is necessary to help prevent mistrials that occur when a regular juror becomes disqualified after a jury has begun deliberations. When this occurs now, the jury can continue its deliberations with 11 members, but only if both the defense and prosecution agree. If they do not agree, a

mistrial is declared, and the trial must start over from the beginning. This can be expensive and time consuming.

HB 1086 would address this problem by delaying the dismissal of alternate jurors until the jury has rendered a verdict and decided punishment. This would allow qualified jurors to step in if a juror had a health issue or was guilty of misconduct and was dismissed after deliberations begin. A mistrial would not have to be declared, and the jury could continue its deliberations. The time and cost involved in starting the trial anew would be avoided.

While alternative jurors may be used infrequently, they are chosen most often for the most important cases, and these cases are the ones that cost the most when a mistrial occurs. The benefits to the criminal justice system as a whole would outweigh any unintended and unfortunate costs to alternate jurors who would have to remain on-call during jury deliberations.

Although alternative jurors called in during deliberations would have missed internal jury discussions, they would have been present during the trial in which the evidence and testimony necessary to making a decision was presented. This ensures that they would be qualified to sit on the jury and render decisions on guilt and punishments.

While the fiscal note estimates that it would cost the state \$1.1 million for fiscal 2008-09, because the state reimburses counties for \$34 of the \$40 per day paid to jurors, this cost would be offset by a reduction in mistrials and would be lower because of the small number of cases in which alternative jurors are chosen. The fiscal note estimates that the fiscal impact on units of local government would be insignificant.

**OPPONENTS
SAY:**

HB 1086 could result in a hardship on alternate jurors for no compelling reason. Alternative jurors are chosen in only a small number of cases, perhaps 5 percent or less, and mistrials are declared in only a small number of those. HB 1086 would result in alternative jurors remaining on-call in numerous situations in which they are not needed. The cost to individual alternative jurors in time off of work and away from families could be high.

It is unclear what the alternate jurors would do while the jury is in deliberations and how having them outside of the deliberations would

affect jury verdicts. If called to fill in for another juror during deliberations, alternative jurors would have missed juries' analysis and discussions up to that point, something that could put them at a disadvantage and have them make decisions when they were less than fully informed.