

SUBJECT: Extending time for prosecutor to appeal certain orders in a criminal case.

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway

0 nays

3 absent — Moreno, Pierson, Talton

WITNESSES: For — Kristen Moore, Fort Bend County District Attorney's Office;
(*Registered, but did not testify:* Michael W. Elliott, Fort Bend County District Attorney's Office; Kevin Petroff, Harris County District Attorney's Office)

Against — None

BACKGROUND: The Code of Criminal Procedure, sec. 44.01(d) provides a prosecutor 15 days to appeal, if a criminal court issues an order to:

- dismiss an indictment, information, or complaint or any portion of an indictment, information, or complaint;
- arrest or modify a judgment;
- grant a new trial;
- sustain a claim of former jeopardy;
- grant a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached, the prosecuting attorney certifies the appeal is not for delay, and the evidence, confession, or admission is considered of substantial important to the case;
- rule on a motion for forensic DNA testing; or
- issue a sentence the prosecutor believes is illegal.

Sec. 44.02 grants a defendant in any criminal action the general right to an appeal.

The Texas Rules for Appellate Procedure, Rule 26.2, states that a notice of appeal by the defendant must be filed within 30 days, and the state's

notice of appeal must be filed 15 days from when a court enters an order, ruling, or sentence.

DIGEST: HB 1801 would amend Code of Criminal Procedure, sec. 44.01(d) to allow a prosecutor 30 days to file an appeal for an order, ruling, or sentence issued in a criminal case.

The bill would take effect September 1, 2007, would only apply to an order, ruling, or sentence entered before the effective date.

SUPPORTERS SAY: HB 1801 would provide the state with the necessary time to determine whether an appeal should be filed. The state's most common appeal is a motion to suppress evidence, and the Criminal Code of Procedure, sec. 44.01(a) requires that for the state to file a motion to suppress evidence, the prosecuting attorney must certify that the appeal is not being taken for purpose of delay and that the evidence, confession, or admission is of substantial importance to the case.

Cullen v. State, 195 S.W.3d 696 (Tex. Crim. App. 2006), recently modified the rules of procedure in that upon the request of the losing party on a motion to suppress evidence, the trial court has 20 days from the date of the ruling to file its findings of fact and conclusions of law. Providing additional time would permit the state to order a transcript of the proceedings in question, speak to the prosecutor assigned to the case, and investigate the facts surrounding the issue to be appealed, rather than being forced to make a premature decision to appeal for fear that the appeal could be waived. Allowing 15 more days to deliberate whether an appeal should be filed likely would reduce the number of appeals filed by the state and prevent defendants from incurring the additional expense of hiring appellate counsel. The bill would provide the state the same amount of time currently afforded to a defendant — 30 days.

OPPONENTS SAY: HB 1801 is unnecessary and would only serve to leverage the state's position in a criminal case.. The state's need for more time to review transcripts does not equate to the defense's need for time to find new evidence to support a verdict of innocence. During the 30 days afforded to the defense, the attorney uses the time to investigate witnesses who were not available to testify during trial, as well as to find new evidence to support a verdict of innocence. These measures are necessary if a defense attorney wishes to file a motion for a new trial or for an appeal on the current ruling. Time is also of the essence if a defense attorney is

providing the same assistance to multiple clients. The state may file an appeal only in a limited number of incidents and has the cooperation of a dedicated staff and far more resources.

NOTES: HB 1801 originally was set on the April 26 General State Calendar and was returned to committee on a point of order.