

SUBJECT: Public Information Act effects of information disclosure in criminal cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vo

0 nays

2 absent — Hodge, Vaught

WITNESSES: For — Michael Ware, Dallas County District Attorney; (*Registered, but did not testify*: Katrina Daniels, Bexar County District Attorney Susan D. Reed; Shanna Igo, Texas Municipal League; Amanda Marzullo, Texas Fair Defense Project)

Against — (*Registered, but did not testify*: Ed Sterling, Texas Press Association, Texas Daily Newspaper Association)

BACKGROUND: Under the Public Information Act, Government Code, sec. 552.007, when a governmental entity or its officer of public information voluntarily makes information available to any person, it must make that information available to the public, unless that information is confidential under the law or its disclosure is expressly prohibited by law.

DIGEST: HB 1360 would establish that the release of information related to the pending, or reasonably anticipated prosecution of a criminal case by the state attorney to defense counsel would not be a voluntary release of information under the Public Information Act and would not waive any right to assert in the future that the information was excepted from disclosure under the Public Information Act.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009, and apply only to information released on or after this date.

**SUPPORTERS
SAY:**

By giving both sides in a criminal prosecution access to all the facts, HB 1360 would allow for better defense representation and decrease wrongful convictions. The bill would strengthen a defendant's right to a fair trial and decrease the likelihood of a tainted jury pool by preventing information from being published that could sway the public's opinion about the defendant. Allowing certain information to be kept private could prevent irreversible harm to an innocent defendant's reputation or to an untried defendant's case in a case with multiple defendants.

HB 1360 would encourage prosecutors to share information freely with the defense counsel without the fear that it would have to be disclosed to the public. Whether or not to share a file with the defense is up to the discretion of each prosecutor. Current law makes prosecutors who would like to have an open-file policy reluctant to do so.

The bill would make more efficient the process of disposing of cases by providing the defense attorney with information to determine if a case was strong enough to proceed to trial or if a deal should be made. A faster process would save court costs and help alleviate the problem of overcrowded county jails.

**OPPONENTS
SAY:**

HB 1360 would interfere with the openness of court proceedings. If the prosecutor releases information, it becomes part of public record. The parties should not be allowed to make a private agreement about what will or will not be open to the public. This bill would diminish the public's access to information and impede the public's right to know.