

**SUBJECT:** Requiring pretrial hearings upon request in criminal cases

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Gallego, Aliseda, Burkett, Carter, Christian, Zedler  
0 nays  
3 absent — Hartnett, Y. Davis, Rodriguez

**WITNESSES:** For — (*Registered, but did not testify*: Kristen Etter, Texas Criminal Defense Lawyers Association)  
Against — None  
On — Cliff Herberg, Bexar County District Attorney

**DIGEST:** CSHB 278 would require courts to set a pre-trial hearing in any criminal case if, at least 60 days before the trial, the prosecutor or the defendant requested a hearing. Courts would be required to hold the requested hearing at least 30 days before the trial.  
  
The bill would take effect September 1, 2011, and would apply to cases in which the indictment or information was presented to the court on or after the effective date.

**SUPPORTERS SAY:** CSHB 278 is needed to ensure that pre-trial hearings occur in all criminal cases in which the prosecutor or defendant find them necessary. Currently, judges may hold pretrial hearings at their own discretion. This means that judges can refuse to hold hearings and force parties to prepare for a trial, even if the issues in dispute, if addressed in a pretrial hearing, could result in no trial.  
  
For example, a pretrial hearing could resolve questions about the admissibility of evidence or constitutional violations. When judges refuse to hold hearings or schedule hearings just before a trial, both sides have to prepare for a trial that might not occur, depending on the resolution of the questions that would be raised in the hearing. Preparing for unnecessary

trials can be costly and burdensome to taxpayers, defendants, victims, witnesses, and others involved in the criminal justice system. Eliminating unnecessary trials would benefit both prosecutors and defendants.

Having pretrial hearings whenever one side of a case thought it was appropriate would improve judicial efficiency. When issues are disposed of pre-trial, it can reduce the number of trials, which can clear dockets for more important cases. Judges would retain control of their dockets in setting the hearing, establishing time limits, and determining other parameters for the hearings.

CSHB 278 would set reasonable requirements to ensure that the statute was not abused. It would require that requests for hearings be made at least 60 days before a trial so that last-minute requests could not be made as a delaying tactic. The bill would require that hearings be held at least 30 days before a trial to let both parties consider plea agreements and prepare for trials.

**OPPONENTS  
SAY:**

CSHB 278 would reduce the ability of judges to manage their dockets as they saw fit. Currently, judges hold pretrial hearings when it is appropriate, and CSHB 278 could result in hearings that judges did not think were necessary or force hearings to be held at a time judges did not think best.

The authority to force a judge to hold a pretrial hearing could be abused and used as a delaying tactic. The bill could result in more trials or trial preparations by reducing the use of plea agreements, which sometimes are facilitated by scheduling pretrial hearings just before trials.

**NOTES:**

The committee substitute added the requirement that requests for hearings occur at least 60 days before the trial.

Rep. Gallego plans to offer a floor amendment that would exclude trials for class C misdemeanors from CSHB 278 and that would require courts, to the extent feasible, to rule at the hearing on all pre-trial motions filed in the case.