

SUBJECT: Allowing law enforcement investigators who are witnesses to stay in trials

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler

0 nays

WITNESSES: For — Aaron Crowell, Texas Municipal Police Association; Bill Lewis, Mothers Against Drunk Driving; (*Registered, but did not testify*: Lon Craft, Texas Municipal Police Association (TMPA); Darrell Davila, representing Tarrant County District Attorney, Joe Shannon, Jr.; William Elkin, Houston Police Retired Officers Association; Clifford Herberg, representing Bexar County District Attorney Susan D. Reed; James Jones, Houston Police Department; Audrey Louis, 81st Judicial District Attorney's Office; Gary Tittle, Dallas Police Department; Donald Baker; Stefanie Collins)

Against — Allen Place, Texas Criminal Defense Lawyers Association

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Under Texas Rule of Evidence 614, at the request of a party, courts are required to order witnesses excluded so that they cannot hear the testimony of other witnesses.

DIGEST: CSHB 96 would allow prosecutors in criminal cases to designate one person who was an officer or employee of a party to serve as the state's courtroom representative during a criminal proceeding. Courts could not use Code of Criminal Procedure Art. 36 or Rule 614 of the Texas Rules of Evidence to exclude persons designated as courtroom representatives unless the person was a law enforcement officer who wore a law enforcement uniform or badge while serving as the representative.

The bill would take effect September 1, 2011. It would apply to criminal proceedings that commence on or after that date.

SUPPORTERS
SAY:

CSHB 96 would level the playing field in criminal trials so that both prosecutors and defense attorneys had the assistance necessary for fair trials. Fair trials in which the prosecution and defense were treated equally would help judges and juries make informed decisions that would further justice.

Under Rule 614 of the Texas Rules of Evidence, upon request, courts are required to order witnesses excluded from the courtroom, and this rule is routinely invoked. Investigators will testify and then be forced to leave a courtroom in case they have to come back for additional testimony. Investigators who stay in the courtroom after testifying cannot testify again. In most cases, this leaves prosecutors without the assistance of the person most knowledgeable about an investigation and a case.

For example, a prosecutor may want to ask a police investigator about a description of a crime scene. If the investigator had already testified and left the courtroom, the prosecutor would have to wait for a break, leave the courtroom, confer in the hallway, and then return. This is awkward, inefficient, and time-consuming.

CSHB 96 would address this problem by allowing prosecutors the discretion to designate a law enforcement investigator as a courtroom representative who could not be excluded from the courtroom. This would be comparable to defendants staying in a courtroom and assisting their trials. The bill would ensure law enforcement officers serving as the state's courtroom representative were viewed fairly by juries by prohibiting them from wearing their uniforms or badges.

CSHB 96 would bring Texas into line with 37 other states and federal courts, which allow a lead investigator to stay in a courtroom and assist a prosecutor during a trial.

OPPONENTS
SAY:

Criminal trials in Texas work well now, and enacting legislation that would change a long-standing rule of evidence is unnecessary. Prosecutors do not work at a disadvantage under current law and rules of evidence.

The purpose of Rule 614 is to help prevent witnesses from tailoring or conforming their testimony to other witnesses, something that may even be done unintentionally. Invoking Rule 614 also prevents witnesses from watching other witnesses and seeing the response of the jury so that the witnesses can bolster their own testimony. While Rule 614 may lead to

inefficiencies at trials, the goal should be a fair trial, not necessarily one that is expedited. It is Rule 614 that helps ensure that courts hear the truth and that trials are fair.

It unfair to compare defendants to criminal investigators who act as witnesses and to argue that both should remain in a trial. Defendants have a constitutional right to be at a trial, and investigators are witnesses that should be treated like all other witnesses. Rule 614 ensures that all witnesses are treated equally and that the playing field is level and this should continue.

While CSHB 96 would prohibit investigators from wearing law enforcement uniforms or badges, this would not address the fundamental problem of allowing them to hear others' testimony.

NOTES:

The committee substitute added the provisions prohibiting law enforcement officers acting as the state's courtroom representative from wearing a law enforcement uniform or badge.

The companion bill, SB 1011 by Huffman, has been referred to the Senate Jurisprudence Committee.