

SUBJECT: Prohibiting the use of hypnotically induced statements in a criminal trial

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson,
Murr, Vasut

0 nays

SENATE VOTE: On final passage, April 20 — 31-0

WITNESSES: None

DIGEST: SB 281 would establish that a statement made during a hypnotic session by a person who had undergone investigative hypnosis would be inadmissible against a defendant in the guilt or innocence phase or the punishment phase of a criminal trial.

"Investigative hypnosis" would be defined as a technique that used hypnosis to explore the memory of a witness to enhance the witness's recall of a legally relevant event, including descriptions of people, conversations, and the environment.

The bill would apply to all statements made during a hypnotic session by a person who had undergone investigative hypnosis for the purpose of enhancing the person's recollection of an event at issue in a criminal investigation or case, including courtroom testimony regarding those statements and statements identifying an accused that were made pursuant to pretrial identification procedures. The bill would not affect the admissibility of evidence derived from such a statement that corroborated a crime.

The bill would take effect September 1, 2021, and would apply to the admissibility of a statement in a criminal proceeding that commenced on or after that date.

SUPPORTERS
SAY:

SB 281 would help ensure the rights of defendants and prevent wrongful convictions based on unreliable evidence by making statements obtained through the use of investigative hypnosis inadmissible in criminal trials. Studies have found that hypnosis can produce unreliable eyewitness identification because hypnotized subjects are highly suggestible. Hypnosis can lead to confabulation, the creation of false memories that the subject believes to be true, in order to fill gaps in memory or respond to leading questions by the hypnotist. Hypnosis also can give an unwarranted sense of confidence to a subject's testimony that may sway a jury's verdict.

The current training curriculum for investigative hypnosis certification is based on scientifically outdated concepts about the nature of memory, and the certifying agency, the Texas Commission on Law Enforcement, has no immediate plans to update or otherwise improve the program. The Texas Department of Public Safety recently suspended its long-running investigative hypnosis program due to scientific criticism of the practice.

Dozens of people have been convicted in Texas in cases based at least partially on hypnosis, with some convictions overturned due to DNA exoneration and some convicted persons currently on death row. SB 281 would prevent the untrustworthy method of hypnosis from being a determining factor in deciding a person's guilt in a situation where lives are at stake.

Concerns about the continuing admissibility of corroborating evidence derived from hypnotically induced statements could be addressed by a floor amendment.

CRITICS
SAY:

SB 281 would allow corroborating evidence derived from a hypnotically induced statement to remain admissible, which would undermine the fundamental purpose of the bill since forensic hypnosis has almost always been used as or in combination with corroborating evidence.

NOTES

The House sponsor plans to offer a floor amendment that would:

- specify that statements by a person who had undergone investigative hypnosis would be inadmissible in a criminal proceeding whether the statements were made during or after the hypnotic session; and
- remove language allowing corroborating evidence derived from hypnotically induced statements to remain admissible.

The House companion bill, HB 1002 by Lucio, was considered by the House Criminal Jurisprudence Committee in a public hearing on March 29 and passed by the House on April 30.