

SUBJECT:	Adding procedures for use of in-custody informant testimony
COMMITTEE:	Criminal Jurisprudence — favorable, without amendment
VOTE:	9 ayes — Moody, Cook, Bhojani, Bowers, Darby, Harrison, Leach, C. Morales, Schatzline 0 nays
WITNESSES:	<p>For — Gary Udashen, Innocence Project of Texas/Innocence Project (<i>Registered, but did not testify</i>: Nick Hudson, American Civil Liberties Union of Texas; M Paige Williams, Dallas County Criminal District Attorney John Creuzot; Shea Place, Texas Criminal Defense Lawyers Association; Michelle Evans; Fran Rhodes)</p> <p>Against — (<i>Registered, but did not testify</i>: James Parnell, Dallas Police Association; Ray Hunt, HPOU; John Wilkerson, Texas Municipal Police Association; Kai Bovik)</p>
BACKGROUND:	Some have suggested that some courts may not sufficiently screen the testimony of informants who are confined with defendants in criminal proceedings, which could lead to wrongful convictions.
DIGEST:	<p>Definitions. HB 3183 would define “in-custody informant” as a person to whom a defendant made a statement against the defendant’s interest while the person was confined in the same correctional facility as the defendant.</p> <p>“Benefit” would mean a reduction in sentence, immunity from prosecution, or any other form of leniency or special treatment that was offered to or requested by an in-custody informant in exchange for testimony or that the informant could reasonably expect to receive in exchange for testimony.</p> <p>Admissibility of testimony. An in-custody informant’s testimony would not be admissible against a defendant in a criminal trial unless the attorney representing the state notified the defendant of the state’s intention to offer</p>

the testimony on or before the 21st day preceding the trial, and in a hearing conducted outside of the jury's presence, the judge found clear and convincing evidence that:

- any benefit offered to the informant would not unduly influence the informant's testimony;
- a rational juror could find the informant to be reliable and credible; and
- the testimony's value would not be outweighed by the danger of causing unfair prejudice to the defendant, causing unnecessary complication of the issues for the jury, or misleading the jury.

The bill would specify factors the court would be required to consider at the hearing related to the in-custody informant's testimony and any benefits offered. The judge could not inform the jury of the judge's ruling at the admissibility hearing. The defendant would have the right to call the in-custody informant as a witness at the admissibility hearing.

Providing information and records. The attorney representing the state would provide all information and records that the state intends to offer at the admissibility hearing to the defendant and the defendant's attorney. The attorney representing the state would have to provide the information no later than 10 days before the admissibility hearing began, unless an extension of time was granted.

Continuance timeframes. For sufficient cause shown, the court would be required to extend the time by which the attorney representing the state would have to provide notice of the intention to offer the in-custody informant's testimony or provide information intended to be offered at the admissibility hearing. The court also would continue the admissibility hearing or the defendant's trial if the defendant or the attorney representing the state needed additional time to prepare for the admissibility hearing.

Jury instruction. If an in-custody informant's testimony was admitted at trial, the court would instruct the jury to disregard the testimony unless the

jury determined that any benefit granted, promised, or offered did not unduly influence the testimony and that the testimony was truthful.

Applicability. The bill would apply only to the prosecution of:

- murder or capital murder;
- kidnapping or aggravated kidnapping;
- continuous sexual abuse of a young child or disabled individual;
- sexual assault, aggravated assault, or aggravated sexual assault;
- injury to a child, elderly individual, or disabled individual;
- arson; or
- robbery, aggravated robbery, or burglary.

The bill would take effect September 1, 2023, and would apply only to evidence in a criminal proceeding commencing on or after the effective date.