

By: Hinojosa, et al.
(Leach)

S.B. No. 338

A BILL TO BE ENTITLED

AN ACT

relating to the use of hypnotically induced statements in a criminal trial.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.24 to read as follows:

Art. 38.24. STATEMENTS OBTAINED BY INVESTIGATIVE HYPNOSIS.

(a) In this article, "investigative hypnosis" means a law enforcement technique that uses 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.

(b) This article applies to all statements made during or after a hypnotic session by a person who has undergone investigative hypnosis performed by a law enforcement agency 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 including statements identifying an accused that are made pursuant to pretrial identification procedures.

(c) A statement described by Subsection (b) is not admissible against a defendant in a criminal trial, whether offered in the guilt or innocence phase or the punishment phase of the trial, if the hypnotic session giving rise to the statement was

1 performed by a law enforcement agency to investigate the offense
2 that is the subject of the trial. Notwithstanding Article 38.23,
3 this article does not affect the admissibility of any physical
4 evidence, or the testimony of any witness identified, that
5 independently corroborates the commission of the offense.

6 SECTION 2. The change in law made by this Act applies to the
7 admissibility of a statement in a criminal proceeding that
8 commences on or after the effective date of this Act. The
9 admissibility of a statement in a criminal proceeding that
10 commences before the effective date of this Act is governed by the
11 law in effect on the date the proceeding commenced, and the former
12 law is continued in effect for that purpose.

13 SECTION 3. This Act takes effect September 1, 2023.