

BILL ANALYSIS

H.B. 2631
By: Krause
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that the use of jailhouse informant testimony in criminal proceedings has led to an increase in wrongful convictions, including at least 13 in Texas. It has been suggested that this is due in part to jurors wrongfully assuming that prosecutors have special knowledge that jailhouse witnesses are telling the truth and also because these witnesses do not have to be screened by judges in a way similar to expert witnesses. H.B. 2631 seeks to address this issue by requiring that jailhouse informants be screened by judges before testifying in a case, in addition to requiring the disclosure of information regarding the informant's background and any benefits given to the informant before their testimony may be taken.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2631 amends the Code of Criminal Procedure to establish that the testimony of an in-custody informant is not admissible against a defendant in a criminal trial of certain specified offenses, whether offered in the guilt or innocence phase or the punishment phase of the trial, unless the following conditions are met:

- on or before the 21st day before the date the trial begins, the state's attorney notifies the defendant of the state's intention to offer the testimony; and
- in a hearing conducted outside the presence of the jury, the judge makes certain findings by clear and convincing evidence relating to any benefit offered to the informant and the informant's reliability, credibility, and testimony.

H.B. 2631 sets out the factors that the court must consider at the admissibility hearing and prohibits the judge from informing the jury of the judge's ruling at the hearing. The bill grants the defendant in the criminal case the right to call the in-custody informant as a witness at the hearing. The bill requires the state's attorney to provide to the defendant and the defendant's attorney all information and records that the state intends to offer at the hearing, including information related to the factors the court must consider under the bill's provisions, not later than 10th day before the date the hearing begins, except for good cause shown.

H.B. 2631 requires the court, if the testimony of an in-custody informant is admitted at trial, to instruct the jury to disregard the informant's testimony unless the jury determines that any benefit granted, promised, or offered to the informant did not unduly influence the testimony

and that the testimony is truthful. The bill defines "benefit" as any express or implied grant, promise, or offer of a reduction in sentence, immunity from prosecution, or other form of leniency or special treatment, made or given to an in-custody informant in exchange for testimony.

H.B. 2631 applies to the prosecution of the following offenses:

- murder and capital murder;
- kidnapping and aggravated kidnapping;
- certain sexual offenses involving a child;
- certain sexual assault offenses;
- aggravated assault;
- injury to a child, elderly individual, or disabled individual;
- arson; and
- certain robbery and burglary offenses.

EFFECTIVE DATE

September 1, 2021.