

BILL ANALYSIS

Senate Research Center

S.B. 281
By: Hinojosa
Criminal Justice
6/9/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since the 1980s, Texas courts have allowed hypnosis-induced testimony. In 1987, the Texas Legislature passed S.B. 929, which charged the Texas Commission on Law Enforcement (TCOLE) with implementing forensic hypnosis training and testing for law enforcement. TCOLE requires police hypnotists to complete a 40-hour basic hypnosis certification course and obtain hypnosis training every 24 months to keep the certificate current. The theory behind the technique is that it helps witnesses recall certain events and suspect descriptions that normal memory cannot access.

However, scientific studies have found the use of hypnosis to produce an alarming amount of unreliable eyewitness identification testimony. Rather than increase the accuracy of eyewitness recall and recognition, Johns Hopkins Medicine has warned that hypnosis does not work as a memory recovery method and leads witnesses to be more confident in their memories, even when they are false. While hypnotherapy can be useful when treating addiction and mental illness, experts resist its use as a forensic tool to enhance eyewitness memory and this concern is heightened when executed by non-professionals.

The Department of Public Safety of the State of Texas has announced the suspension of their forensic hypnosis program, stating that they have developed more advanced interview and interrogation techniques that yield better results.

(Original Author's / Sponsor's Statement of Intent)

S.B. 281 amends current law relating to the use of hypnotically induced statements in a criminal trial.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.24, as follows:

Art. 38.24. STATEMENTS OBTAINED BY INVESTIGATIVE HYPNOSIS. (a)
Defines "investigative hypnosis."

(b) Provides that this article applies to all statements made during or after a hypnotic session by a person who has 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 including statements identifying an accused that are made pursuant to pretrial identification procedures.

(c) Provides that 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. Provides that, notwithstanding Article 38.23 (Evidence Not to Be Used), this article does not affect the admissibility of any physical evidence, or the testimony of any witness identified, that independently corroborates the crime.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2021.