

BILL ANALYSIS

Senate Research Center

S.B. 338
By: Hinojosa
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Hypnosis has been used as a forensic tool in Texas since the 1980s. In 1987, the legislature charged the Texas Commission on Law Enforcement (TCOLE) with implementing forensic hypnosis training and testing for law enforcement. The course's handbook has not been updated since the training was established in the 1980s. Witnesses are often told that memory works like a videotape and that during hypnosis, they will be able to recall certain events and suspect descriptions that their normal memory would not be able to 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 recovering 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.

In 2021, the Department of Public Safety announced the suspension of their hypnosis program stating that they have developed more advanced interview and interrogation techniques that yield better results.

As of today, at least 27 states have banned testimony retrieved during hypnosis from being introduced as evidence. With so much uncertainty in investigative hypnosis, it is vital to protect the public by requiring that forensic evidence is supported by science, research, and data so as not to wrongfully convict an innocent person.

BILL DETAILS

- S.B. 338 amends the Code of Criminal Procedure to prohibit statements made during or after a hypnotic session as admissible evidence in a criminal trial.
- It provides that any physical evidence identified that independently corroborates the commission of a crime is admissible.

COMMITTEE SUBSTITUTE

- C.S.S.B. 338 addresses the veto statement from the 87th Regular Legislative Session and specifies that statements are inadmissible only if the hypnotic session giving rise to the statement was performed to investigate the specific offense that is the subject of the trial.

S.B. 338 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 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) 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, if the hypnotic session giving rise to the statement was performed by a law enforcement agency to investigate the offense that is the subject of the trial. Provides that this article, notwithstanding Article 38.23 (Evidence Not to Be Used), does not affect the admissibility of any physical evidence, or the testimony of any witness identified, that independently corroborates the commission of the offense.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2023.