

BILL ANALYSIS

S.B. 338
By: Hinojosa
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 1987, the Texas Legislature passed S.B. 929, which authorized the Texas Commission on Law Enforcement to establish minimum requirements for the training, testing, and certification of peace officers who utilize investigative hypnosis. 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.

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're false. According to a 2019 article in The Guardian, at least 27 states have banned testimony retrieved during hypnosis from being introduced as evidence.

The 87th Texas Legislature sought to address this issue by enacting S.B. 281, which made inadmissible against a defendant in a criminal trial 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. However, the governor vetoed this legislation on the grounds that a late amendment to the bill dramatically expanded its scope in an unacceptable way.

S.B. 338 seeks again to make statements made during or after a hypnotic session inadmissible as evidence in a criminal trial while addressing the governor's concerns by clarifying that the inapplicability applies only if the hypnotic session giving rise to the statement was performed to investigate the offense that is the subject of the trial.

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

S.B. 338 amends the Code of Criminal Procedure to make inadmissible against a defendant in a criminal trial, whether offered in the guilt or innocence phase or the punishment phase of the trial, 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. The bill provides the following:

- the inadmissibility of those statements applies only with respect to hypnotic sessions performed by a law enforcement agency to investigate the offense that is the subject of the trial and only with respect to the admissibility of a statement in a criminal proceeding that commences on or after the bill's effective date;
- the inadmissibility of the statements does not affect the admissibility of any physical evidence, or the testimony of any witness identified, that independently corroborates the commission of the offense; and
- "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.

EFFECTIVE DATE

September 1, 2023.