

- SUBJECT:** Allowing requests that pretrial hearings precede jury selection
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Hinojosa, Dunnam, Garcia, Green, Keel, Nixon, Smith, Talton
0 nays
1 absent — Wise
- WITNESSES:** For — David Weeks
Against — None
- BACKGROUND:** The Code of Criminal Procedure, art. 28.01 allows a prosecutor or defense attorney to request a pretrial hearing that allows the court to rule on motions before a trial begins. These include motions for the suppression of evidence, discovery, double jeopardy, and other trial issues. The current law, however, does not indicate whether pretrial hearings should be held before or after jury selection or “voir dire” begins.
- DIGEST:** CSHB 142 would amend the code to require a court to schedule and complete a pretrial hearing before jury selection began if the prosecutor or the attorney for a defendant who had not waived the right to a jury trial made a timely request.

The bill would take effect September 1, 1999, and would apply only to criminal cases in which the indictment or information was filed on or after that date.
- SUPPORTERS SAY:** CSHB 142 would enable both prosecutors and defense attorneys to conduct jury selection more effectively. When important trial motions have not been decided in a pretrial hearing, the attorney may be forced either to leave out evidence that later might be ruled inadmissible or to mention evidence that might prejudice the jury pool. Jury selection is an important part of a trial, so it should not come before a pretrial hearing.

CSHB 142 would promote judicial economy, since some pretrial motions are dispositive — that is, they can end the case — if granted. Dispositive motions include special pleas for double jeopardy and motions to suppress evidence in narcotics cases. CSHB 142 would prevent wasting time and effort by selecting a jury only to have a dispositive motion granted.

Prosecutors and defense attorneys already can request pretrial hearings, so this bill would not increase the number of pretrial hearings. The pretrial hearing would have to be scheduled before jury selection only if the prosecutor or defense attorney so requested. That would not be likely to occur if a particular circumstance made it beneficial to have the pretrial hearing after jury selection.

**OPPONENTS
SAY:**

It should be up to the court to schedule the pretrial hearing in the interests of judicial economy. CSHB 142 could cause unnecessary delay.

NOTES:

The original bill provided only for the defense attorney to request that a pretrial hearing precede jury selection. The committee substitute extended the privilege to attorneys representing the state.