

SUBJECT: Requiring the corroboration of testimony by jailhouse informants

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 11 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Moody,
Pierson, Riddle, Vaught, Vo

0 nays

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Edwin Colfax, The Justice Project; Scott Henson, Innocence
Project of Texas; (*Registered, but did not testify*: Kristin Etter, Texas
Criminal Defense Lawyers Association; Samuel Gunter, Texas Criminal
Justice Coalition; Amanda Marzullo, Texas Fair Defense Project; Matt
Simpson, ACLU of Texas)

Against — None

DIGEST: SB 1681 would amend Code of Criminal Procedure, art. 38.075, to require
that a defendant could not be convicted on the testimony of a person to
whom the defendant made a statement against the defendant's interest
during a time when the person and the defendant were imprisoned in the
same correctional facility, unless the testimony was corroborated by other
evidence.

The bill would take effect on September 1, 2009.

SUPPORTERS
SAY: SB 1681 would improve the integrity of the court system by requiring
corroboration of jailhouse informants, a historically untrustworthy source
of evidence. The Northwestern University School of Law Center on
Wrongful Convictions found in a 2004 study that of 111 death-row
exonerations since capital punishment was resumed in the 1970s, 51 of the
convictions were based at least in part on informant testimony.

SB 1681 would not prevent the use of jailhouse informants. In many cases,
they provide useful evidence that contributes to the conviction of guilty
and dangerous offenders. However, because jailhouse informants have a

strong incentive to fabricate confessions or incriminating evidence in exchange for lighter sentences or the goodwill of the criminal justice system, it is important to make sure that their testimony is corroborated by at least one additional piece of evidence.

Under current law, a conviction can be obtained on the testimony of jailhouse informants alone. SB 1681 would provide an additional requirement that there be at least one other source of evidence against the defendant.

Under current law, confessions by defendants and statements by accomplices and co-defendants against the defendant require corroboration. Current law generally only requires corroboration of statements by defendants and criminals. SB 1681 would include jailhouse informants in this list. Doing so would be consistent with current practice.

As a practical matter, the testimony of jailhouse informants is almost never enough to earn a conviction on its own because juries pick up quickly on a jailhouse informant's incentive to falsify testimony. Adding a corroboration requirement to jailhouse-informant testimony simply would codify what has been long been the practice in Texas.

**OPPONENTS
SAY:**

This bill would make it more difficult for prosecutors to bring a case against a defendant when the only evidence available had come from jailhouse informant. It would be more appropriate to continue to let a jury weigh the value of this evidence. Jurors are capable of recognizing the strengths and weaknesses of jailhouse informants, and defense attorneys always can be counted on to point these out.