

SUBJECT: Requiring pretrial hearings in criminal cases on request of either party

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Burnam, Canales, Hughes, Leach, Moody
2 nays — Schaefer, Toth
1 present not voting — Carter

WITNESSES: For — Kristin Etter, Texas Criminal Defense Lawyers Association;
(*Registered, but did not testify:* Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; Travis Leete, The Texas Criminal Justice Coalition)
Against — None

DIGEST: HB 212 would require courts to set a pre-trial hearing in any criminal case, other than for those offenses that were punishable as a class C misdemeanor (maximum fine of \$500) if at least 60 days before the trial, the prosecutor or the defendant requested a hearing.

Courts would be required to hold the requested hearing at least 30 days before the trial.

The failure of a court to comply with a pre-trial hearing request would not be grounds for dismissal of a case against a defendant. A court would not sustain a motion to set aside an indictment, information or complaint for failure to provide a speedy trial, based solely on the failure of the court to comply with a request for a pre-trial hearing.

The bill would take effect September 1, 2013, and would apply to cases in which the indictment or information was presented to the court on or after the effective date.

SUPPORTERS SAY: HB 212 is needed to ensure that pre-trial hearings occur in all criminal cases in which the prosecutor or defendant find them necessary. Currently, judges may hold pretrial hearings on their own discretion. This means that

judges can refuse to hold hearings and force parties to prepare for a trial, even if the issues in dispute, if addressed in a pretrial hearing, could result in no trial.

For example, a pretrial hearing could resolve questions about the admissibility of evidence or constitutional violations. When judges refuse to hold hearings or schedule hearings just before a trial, both sides have to prepare for a trial that might not occur, depending on the resolution of the questions that would be raised in the hearing. Preparing for unnecessary trials can be costly and burdensome for taxpayers, defendants, victims, witnesses, and others involved in the criminal justice system. Eliminating unnecessary trials would benefit both prosecutors and defendants.

Having pretrial hearings whenever one side of a case thought it was appropriate would improve judicial efficiency. When issues are disposed of pre-trial, it can reduce the number of trials, which can clear dockets for more important cases. Under the bill, judges would retain control of their dockets in setting the hearing, establishing time limits, and determining other parameters for the hearings.

HB 212 would set reasonable requirements to ensure that the statute was not abused. It could not be used in cases in which the offense was for the lowest-level misdemeanor, a Class C misdemeanor. It would require that requests for hearings be made at least 60 days before a trial so that last-minute requests could not be made as a delaying tactic. The bill would require that hearings be held at least 30 days before a trial to let both parties adequately consider plea agreements and prepare for trials. Even if the bill reduced the number of plea agreements, which could raise costs, the benefit of increased evidentiary transparency would increase justice, transparency, and validity of the criminal justice system.

**OPPONENTS
SAY:**

HB 212 would reduce the ability of judges to manage their dockets as they saw fit. Currently, judges hold pretrial hearings when it is appropriate, and HB 212 could result in hearings that judges did not think were necessary or force hearings to be held at a time judges did not think best.

The authority to force a judge to hold a pretrial hearing could be abused and used as a delaying tactic. Further the bill would not limit the number of these requests. The bill could result in more trials or trial preparations by reducing the use of plea agreements, which sometimes are facilitating by scheduling pretrial hearings just before trials.