

- SUBJECT:** Creating a procedure to request a new criminal trial if all parties agree
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco
- 0 nays
- WITNESSES:** For — Nicolas Hughes, Harris County Public Defender's Office; Mike Ware, Innocence Project of Texas; Shea Place, Texas Criminal Defense Lawyers Association; Elsa Alcala, Texas Defender Service; Maite Sample; (*Registered, but did not testify:* Pete Gallego, Bexar County Criminal District Attorney's Office; Christian Henricksen, Bexar County District Attorney's Office; Kathleen Mitchell, Just Liberty; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Jennifer Erschabek and Lauren Oertel, Texas Inmate Families Association; Marc Levin, Texas Public Policy Foundation; Susan Lippman)
- Against — (*Registered, but did not testify:* Randall Sims, 47th District Attorney's Office; John Hubert, Kleberg and Kenedy Counties District Attorney's Office; Kent Birdsong, Oldham County Attorney's Office)
- On — Raoul Schonemann
- BACKGROUND:** Some have noted that Texas does not have a provision to allow requests for a new criminal trial in the interest of justice, even when all parties agree with the request, and that allowing these requests would fill a gap when other remedies are not available or would not be timely or efficient.
- DIGEST:** CSHB 4202 would establish a procedure for requesting a new criminal trial in certain cases if all parties agreed to the request. The bill would allow defendants to file a motion for a new trial with the convicting court at any time during a prison term of more than three years or any time after the death penalty had been imposed if the defendant had the written

consent of the district attorney or criminal district attorney. The motion would have to include an agreed statement of facts for the court to consider.

After a hearing, the court could grant the defendant a new trial in the interest of justice. The court could rely on the agreed statement in granting a new trial, and the agreed statement of facts could constitute the entire record in the cause.

A decision to grant a new trial could be appealed, but neither the prosecutor nor the defendant could appeal a decision to deny a motion for a new trial. The prosecutor could condition consent to a motion for a new trial on any appropriate reason, including a requirement that the defendant plead guilty and accept a specific punishment, waive parole eligibility, or waive the right to appeal.

Until the trial court granted the motion for a new trial, the defendant could withdraw the motion or the prosecutor could withdraw consent to the motion. If the motion or consent was withdrawn, the court would be prohibited from granting a new trial in the case based on that motion.

The bill would take effect September 1, 2019.