

SUBJECT: Prohibiting the use of hypnotically induced testimony in a criminal trial

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Murr, Vasut
0 nays
1 absent — A. Johnson

WITNESSES: For — Mike Ware, Innocence Project of Texas; Scott Henson, Just Liberty; Allen Place, Texas Criminal Defense Lawyers Association, Billy Muston; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Angelica Cogliano, Austin Lawyers Guild; Shea Place, Texas Criminal Defense Lawyers Association; Maggie Luna, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Cynthia Simons, Texas Women's Justice Coalition; Rebecca Bernhardt, The Innocence Project of Texas; Suzanne Mitchell)
Against — None
On — Wende Wakeman

DIGEST: HB 1002 would make testimony obtained by hypnosis inadmissible in any phase of a criminal trial.
The bill would take effect September 1, 2021, and would apply only to criminal proceedings commencing on or after that date.

SUPPORTERS SAY: HB 1002 would help ensure the rights of defendants and prevent wrongful convictions based on unreliable evidence by making testimony obtained through the use of investigative hypnosis inadmissible in criminal trials. Studies have found that hypnosis can produce unreliable eyewitness identification because hypnotized subjects are highly suggestible. Hypnosis can lead to confabulation, the creation of false memories that the subject believes to be true, in order to fill gaps in memory or respond

to leading questions by the hypnotist. Hypnosis can give an unwarranted sense of confidence to a subject's testimony that may sway a jury's verdict.

The current training curriculum for investigative hypnosis certification is based on scientifically outdated concepts about the nature of memory, and the certifying agency, the Texas Commission on Law Enforcement, has no immediate plans to update or otherwise improve the program. The Texas Department of Public Safety recently suspended its long-running investigative hypnosis program due to scientific criticism of the practice.

Dozens of people have been convicted in Texas in cases based at least partially on hypnosis, with some convictions overturned due to DNA exoneration and some currently on death row. HB 1002 would prevent the untrustworthy method of hypnosis from being a determining factor in deciding a person's guilt in a situation where lives are at stake.

Concerns about the application of the bill due to its specific language could continue to be discussed.

CRITICS
SAY:

HB 1002, as written, would apply to testimony obtained by using hypnosis during a criminal trial. In order to clearly prohibit the admissibility in criminal trial of statements made under hypnosis during an investigation, the bill's language would need to be amended. HB 1002 could create legal confusion over the admissibility of corroborating tangible evidence discovered due to investigative hypnosis, as the bill would not explicitly prohibit the practice and, as written, would apply only to testimony.