

- SUBJECT:** Requiring corroboration of peace officer testimony in drug cases
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Collier, Cason, Cook, Crockett, Hinojosa, A. Johnson, Vasut
2 nays — K. Bell, Murr
- WITNESSES:** For — Koretta Brown, Alliance For A New Justice System; Warren Burkley and Chas Moore, Austin Justice Coalition; LaTonya Whittington, Cannabis Reform of Houston; Scott Henson, Just Liberty; Rene Perez, Libertarian Party of Texas; Jeff Blackburn, Panhandle Justice Project; Linda Nuno, PI; Rebecca Bernhardt, The Innocence Project of Texas; Alan Bean; Michael Fields; Frederick Haynes; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; John T Floyd, Alliance for a New Justice System; Greg Glod, Americans For Prosperity; M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; Dustin Cox, GRAV; Kathy Mitchell, Just Liberty; Tom Maddox, Sheriffs Association of Texas; Amanda List, Texas Appleseed; Dr. Candice Matthews, Texas Coalition Of Black Democrats; Shea Place, Texas Criminal Defense Lawyers Association; Sarah Reyes, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Louis Wichers, Texas Gun Sense; John Chancellor, Texas Police Chiefs Association; Michael Spates, The Alliance For A New Justice System; Thomas Parkinson; Zoe Russell)
- Against — (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; Aldo Caldo; Deana Johnston; David Kohler; Tony LaMarr)
- BACKGROUND:** Health and Safety Code ch. 481 is the Texas Controlled Substances Act. It includes criminal penalties for the manufacture, delivery, and possession of controlled substances.
- Under Code of Criminal Procedure art. 38.141, individuals may not be convicted of an offense under the Texas Controlled Substances Act on the testimony of someone who is not a peace officer or a special investigator

but who is acting covertly on behalf of a law enforcement agency or under the color of law enforcement unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed.

DIGEST: HB 834 would require corroborating evidence for Texas Controlled Substance Act convictions made on the testimony of peace officers acting covertly on behalf of a law enforcement agency. A defendant could not be convicted of an offense under the act on the testimony of an undercover peace officer or a person working undercover on behalf of a law enforcement agency unless the testimony were corroborated by other evidence that tended to connect the defendant with the offense.

The bill would take effect September 1, 2021, and would apply to cases in which a judgment was entered on or after that date.

SUPPORTERS SAY: HB 834 would provide a check against police misconduct and ensure the accuracy of drug convictions by requiring corroborating evidence in drug cases where the conviction was based on testimony of an undercover peace officer. Currently, corroborating evidence is required in drug cases involving testimony from a person acting covertly unless the testimony comes from undercover peace officers. This exception has allowed unreliable officer testimony to taint prosecutions in drug cases and resulted in harm to innocent Texans.

HB 834 would address this by applying the same requirement to peace officers as to others who act covertly and give testimony and ensure there is corroborating evidence in all such drug cases. The bill would rectify the inherent problems in relying solely on word of one person in these cases and help ensure public confidence in the criminal justice system.

The bill would not burden law enforcement agencies or make their work more difficult because it would allow any type of other evidence to support the testimony of the undercover officer. Getting the facts right in a drug case is important enough to enact this requirement.

CRITICS HB 834 could hamstring narcotics investigations and prosecutions by

SAY: making it more difficult to use information from an undercover peace officer. The bill could delay cases that are otherwise ready for prosecution and that rely on solid testimony from an undercover peace officer.