

SUBJECT: Allowing disposal of evidence from capital trials five years after execution

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Riddle, Ellis, Hodge, Pena, Talton
0 nays
3 absent — Denny, Dunnam, P. Moreno

WITNESSES: For — Chuck Noll, Harris County District Attorney’s Office; Gail M. Turley, County and District Clerks’ Association of Texas
Against — None

BACKGROUND: Code of Criminal Procedure, art. 2.21 allows district clerks to dispose of exhibits from criminal trials one year after a conviction becomes final if the case is a misdemeanor or a felony in which a sentence of five years or less was imposed. They can dispose of exhibits from felony trials in which the sentence was five years or more two years after the conviction becomes final.

DIGEST: CSHB 3397 would authorize district clerks to dispose of exhibits from capital murder cases in which a death sentence was imposed five years after the defendant had been put to death. A clerk would have to provide written notice to the prosecutor and the defense attorney in the case before disposing of exhibits from capital trials. Clerks could dispose of the exhibits unless they received a written objection from the prosecutor or defense attorney within 31 days of the date of the notice. Clerks would have to retain the exhibits if the prosecutor or defense attorney objected to disposing of them.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY: CSHB 3397 would help district clerks address the space and organizational problems associated with having to store evidence from capital murder cases indefinitely. It would help meet the needs of the justice system by setting a

reasonable requirement to hold the evidence only for five years after an execution and by ensuring that evidence from murder trials did not enter the free market and glamorize the crime.

Current law sets limits on how long evidence must be stored from other kinds of trials but does not mention how long evidence from capital trials must be stored. Because the statutes are silent about capital cases, many clerks hold the evidence indefinitely. This can create storage problems, because capital trials can produce a large volume of evidence that sometimes is bulky or hard to store. For example, counties have stored cars and refrigerators.

CSHB 3397 would ensure that evidence from a capital murder trial would be available for any legitimate, realistic need. Evidence from a capital murder would have no value to the defendant after an execution, when appeals were exhausted and the defendant was dead. The bill would allow anyone with a legitimate need for the evidence from a capital trial to obtain that evidence. Generally, capital murder defendants spend many years on death row before being executed, so evidence would be kept for longer than five years. If the evidence included something valuable or sentimental to a victim, a victim's family, or another person, they could go to court to obtain it during the years the defendant was on death row or during the five-year period after the defendant was executed.

If prosecutors or defense attorneys thought they needed evidence after an execution, they could object to disposal of the evidence and have it preserved. For example, if defense attorneys wanted to preserve the possibility of raising a claim of innocence after an execution, they could object to disposal of the evidence, as could a prosecutor who thought that the defendant might have been involved in multiple crimes. Once a defendant has been executed, there is no right to DNA testing or any other analysis of evidence. CSHB 3397 would help ensure the finality of cases in which an entity might want to obtain evidence for testing after an execution.

Although evidence should remain with the clerks, storing it indefinitely in a crowded storage area could increase the chances of its being stolen or misplaced. In such a case, it could be sold, perhaps by an on-line auction company. CSHB 3397 would help prevent the use of evidence in this manner to glamorize violence.

OPPONENTS
SAY:

It would be unwise to allow the disposal of evidence from capital murder trials after a defendant had been executed, because the evidence could have a bearing on cases of people who were still alive and could hinder future attempts to discover whether a defendant who had been executed was innocent.

The advantages gained by disposing of this evidence would be marginal when compared with its potential value in other cases. Typically, capital murder cases do not generate large amounts of evidence. For example, the evidence might include clothes, hairs, slides with DNA, weapons, and photographs. Fingerprints lifted from large items might be saved, but large items such as a refrigerator are generally not part of the evidence

Evidence from a capital murder trial could be important to a case of someone who was still alive. For example, in the cases of two rapes and murders, a defendant convicted in the second case could claim that a person who was convicted and executed for the first case was guilty of the second crime. Evidence from that first case could be useful in investigating this claim but would be impossible to use if it were disposed of under CSHB 3397. It would be better to require clerks to keep evidence for what could be the lifetime of anyone who might be exonerated by that evidence, perhaps 50 years or so, or to leave the statute silent on how long evidence must be kept. If the statute were silent, a defense attorney — perhaps one unrelated to the case of the person being executed and therefore unauthorized by CSHB 3397 to protest the disposal — could move to prevent it from being destroyed.

An investigation into the possible innocence of someone who had been executed might be undertaken to set the record straight about a murder. This would be impossible if evidence from the case was destroyed.

NOTES:

The committee substitute added the deadline for prosecutors and defense attorneys to respond to notice from a clerk if they wanted the evidence to be preserved.

The companion bill, SB 1854 by Barrientos, has been referred to the Senate Criminal Justice Committee.