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# Dallas DA, judge clash over demand that prosecutors provide criminal histories of officers who testify

By JENNIFER EMILY

Staff Writer

[jemily@dallasnews.com](mailto:jemily@dallasnews.com)

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A Text Size A set of controls for text size and social media sharing. It includes a large letter 'A', the text 'Text Size', and several small icons for social media and utility functions.

The Dallas County district attorney's office is battling a judge over whether prosecutors should routinely research and disclose the criminal histories of police officers who testify.

Criminal Court Judge Julia Hayes has on at least two occasions in recent weeks ordered prosecutors to determine the criminal background histories of police officers testifying in her misdemeanor court so that the information can be shared with defense attorneys. The district attorney's office has refused, saying the law forbids handing over the information.

Hayes ordered a prosecutor held in contempt for refusing to comply with her order. In response, the DA's office on Friday petitioned the 5th District Court of Appeals in Dallas to compel Hayes to withdraw the order about the records of officers.

Hayes, a Democrat in her first term, and public defender Elizabeth Perry, who is representing a defendant charged with family violence, declined to comment.

Defense attorneys say they worry that the law allows prosecutors to hide the background of police officers. Defense attorney J. Michael Price II said that prosecutors already run the records of civilian witnesses and jurors and that he doesn't see a difference in including officers.

"I think truthfully, they don't want to run them because they don't want to be in the position of finding that dozens of officers or more may have criminal backgrounds," Price said.

An officer's background could be used to discredit him or her on the witness stand.

Price had a recent DWI case in which Hayes ordered prosecutors to produce the criminal background information. But Hayes then rescinded the order and questioned the officers herself. One officer had no criminal record, one had an internal affairs investigation and the other had a criminal conviction for theft from more than

15 years ago.

David Alex, a top prosecutor under District Attorney [Craig Watkins](#), said that the law prevents researching and turning over information about criminal histories. Prosecutors say they could also lose access to law enforcement databases by running searches.

“We’re going to follow the law as it’s written. The penalty is a Class B misdemeanor, and we can’t go around breaking the law,” Alex said. If an appeals court “tells us to do this, we’ll do it.”

A September 2001 letter from the [U.S. Justice Department](#) that prosecutors attached to their petition said that producing the records — even under a court order — violates federal law because it is an invasion of privacy. The letter was written to the Texas [Department of Public Safety](#) after a court order requested similar information in another Texas county.

The letter says that there is a difference if a criminal history already exists in the prosecutor’s case file. But the courts cannot compel prosecutors to create the information.

Alex also said that doesn’t mean prosecutors won’t look into the backgrounds of police officers if a defense attorney provides a specific allegation of criminal or questionable activity. The law requires that information that could benefit a defendant be turned over to the defense.

Felony and theft convictions and crimes of moral turpitude can be used to impeach an officer’s credibility. If defense attorneys do not know whether witnesses have these convictions, they can question witnesses about their history during trial.

Prosecutors and judges don’t have access to state and national criminal records databases. DA’s investigators, who are sworn peace officers, have access. Defense attorneys have limited access to some criminal background information.

Judges in other courts routinely tell prosecutors that they cannot order them to turn over criminal background of witnesses but say that they encourage the state to comply with the law that requires they turn over any information that could be beneficial to the defense.

On Thursday, Hayes ordered prosecutor Keena Miller to produce the records at the request of defense attorneys for police officers who were expected to testify in a domestic violence case. Hayes planned to examine the information to determine whether the defense should have it.

Miller refused. Hayes then held Miller in contempt and fined her \$250. Miller was detained in the courtroom. But because officers of the court are entitled to a hearing about such matters, she was released and the issue was continued until Friday.

Miller said in an affidavit that when Hayes asked her to turn over the records, “I said ‘No.’”

“Judge asked if I was disobeying a direct court order, and I said, ‘Yes,’” Miller wrote. Hayes then ordered Miller detained.

The Friday contempt hearing, where Watkins represented the state, lasted only minutes because of the

involvement of the appellate court. After prosecutors gave Hayes a copy of the petition, she took a recess to read it. She returned and said that the hearing would be postponed until the appellate court rules. Hayes could file a response to the state's request to the appellate court.

## WHAT'S NEXT

There is no timeline for the appellate court to rule.

If the order stands and the prosecutor is held in contempt, Administrative Judge John Ovard would appoint another judge to hear the case.

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