

SUBJECT: Limiting interviews and exams of child witnesses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Hinojosa, Dunnam, Garcia, Green, Keel, Talton, Wise
0 nays
2 absent — Nixon, Smith

WITNESSES: For — None
Against — WC Kirkendall

DIGEST: HB 282 would require a court to reasonably limit the number of interviews and examinations of children younger than 16 years old who were complaining witnesses in pending proceedings. This requirement could be waived if the risk of prejudice to the defendant outweighed the child's risk of psychological damage resulting from the multiple interviews and exams.
HB 282 would take effect September 1, 1999,

SUPPORTERS SAY: HB 282 would help protect victims of child abuse from being abused a second time by the criminal justice system. The investigation and prosecution of a crime often requires child victims to be interviewed and examined numerous times. Children could be interviewed up to a dozen times by social workers, law enforcement authorities, prosecutors, therapists and others. This can result in trauma to a child already under extreme stress and make them feel as if they were on trial.
HB 282 would stop this practice by requiring an impartial observer – the judge – to look out for the child's best interest and limit questioning and exams. This would help protect children from psychological damage from repeated questioning while preserving the rights of all parties to question a child.
HB 282 would allow judges to make decisions about whether restrictions are needed on a case-by-case basis. Judges could evaluate each case and make

decisions based on the needs of the child, the prosecution, and defense. HB 282 would not infringe on prosecutor's or anyone else's authority. All parties still could interview a child, but the number of times the child could be interviewed could be limited to protect the child.

HB 282 would protect the rights of defendants in cases because the limitation could be waived if the risk of prejudice to the defendant outweighed the risk of damage to the child.

OPPONENTS
SAY:

HB 282 could violate the constitutional separation of powers by allowing a judicial official to restrict the way a prosecutor conducts an investigation or prepares a case. It would be inappropriate to have a judge making decisions at any point except when a case was brought to trial. In addition, it is unclear how HB 282 would work. Judges would not have jurisdiction in cases that have not gone to trial and should not be making rulings about pre-indictment investigations.

Prosecutors should be trusted to make proper decisions about child witnesses. Prosecutors may need to interview a child witness when a crime occurs and then later when the case goes to trial, and some courts could interpret this as excessive, thereby hampering a prosecutor's preparation of a case.

HB 282 actually could hurt some criminal investigations. For example, a parent – who could be the offender in a child sex abuse case – could tell a judge that a child has been traumatized and should not be interviewed. This could effectively stop an investigation into the parent's behavior.

HB 282 is unnecessary because prosecutors are sensitized to the needs of child witnesses. It is in the best interest of a prosecutor to watch out for the good of a child witness. In addition, prosecutors go through training that sensitizes them to child witnesses.

While HB 282 contains a test to see if restricting child interviews and exams would prejudice the defense, there would be no such test for restrictions that could prejudice the prosecution.

HB 282 is drawn so broadly that it would apply to all cases in which a child was a victim. This could mean that if a child's bicycle was stolen, interviews with the child could be limited.

