

- SUBJECT:** Expanding offenses for which child witness can testify by videotape
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Hinojosa, Dunnam, Talton, Garcia, Kitchen, Martinez Fischer, Shields
0 nays
2 absent — Keel, Green
- SENATE VOTE:** On final passage, February — voice vote
- WITNESSES:** None
- BACKGROUND:** Code of Criminal Procedure, art. 38.071 permits a child under 13 to testify as a witness via recording if an offense is committed against the child and the trial court finds that the child is unavailable to testify at the trial. A court determines “unavailability” by considering relevant factors such as the relationship of the defendant to the child, the character and duration of the alleged offense, the age, maturity, and emotional stability of the child, how much time has passed since the alleged offense, whether the child would be able to testify in front of the defendant, and how the child would be affected psychologically and physically by confronting the defendant in a courtroom setting.
- The child can make a recorded statement before the indictment if a number of conditions are met, including allowing attorneys for the prosecution and defense to ask the child questions in a later, recorded session. The court also can order that the child give testimony during the trial by closed-circuit television. Attorneys for the state and the defense may be present in the room and ask the child questions. A person who acts as the child’s interviewer on the recording also can be cross-examined in the courtroom during the trial.
- In any case, the defendant must be allowed to view the child’s testimony, but the court must attempt to ensure that the child cannot hear or see the

defendant. The court must take all reasonable steps necessary and available to minimize undue psychological trauma and emotional and physical stress to the child.

Qualifying offenses are indecency with a child, sexual assault, aggravated sexual assault, aggravated assault, prohibited sexual conduct, sexual performance by a child, and injury to a child, elderly individual, or disabled individual.

DIGEST:

SB 24 would allow a child who was a witness to murder, capital murder, manslaughter, aggravated kidnapping, or aggravated robbery, and was unavailable to testify in the presence of the defendant to testify at the hearing or proceeding via recording.

A child's recorded statement before a complaint had been filed or an indictment returned would be admissible only if certain conditions were met. SB 24 would strike the requirement that the attorney representing the state notify the court, defendant, and defense attorney that the recording could be used at the trial, but would leave in place the requirement that the state's attorney inform those parties of the existence of the recording.

Throughout the code, the word "trial" would be struck and replaced by "hearing or proceeding" to clarify when a child's recorded testimony was admissible.

SB 24 would take effect on September 1, 2001.

**SUPPORTERS
SAY:**

Children who already are traumatized by witnessing a violent crime should not face further emotional damage in a courtroom. The law already allows some child victims to testify by closed-circuit television. This bill would extend that protection to children under 13 who were witnesses to the most violent and heinous crimes. At least 17 states and the federal government allow child-witness or victim testimony via closed-circuit television in court.

In some cases, a child may be touched as traumatically by witnessing the crime as by being a victim. In Richardson, three children witnessed their father strangle their mother to death in their home. Current law requires them to testify in front of him in court, causing these children the trauma of facing

a man who violently murdered their mother, possibly sending a parent they love to prison, and placing themselves in a situation where they do not have their father to take care of them anymore. Being able to testify outside of their father's presence could reduce these children's psychological and emotional distress.

SB 24 would not prevent juries from viewing and gauging a child's demeanor during testimony. Current law requires that the recording be "sufficient to allow the court and the finder of fact to assess the demeanor of the child and the interviewer." In addition, attorneys for the state and the defense are able to cross-examine the child, the same as if he or she were in the courtroom.

This bill rightly would allow a judge discretion to let a child witness testify outside of the courtroom if the judge thought doing so would be in the child's best interests. If the court found that the child would suffer undue psychological or physical harm by testifying in person, it could allow the child to testify by closed-circuit television or a recording. Otherwise, the court would be required to have the child testify in person.

OPPONENTS
SAY:

Children who witness crimes experience a lower level of involvement and trauma than those who are victims of violent crime. While all children should be protected from trauma to the extent possible, child witnesses who are not also victims should face those they accuse of a crime in a courtroom setting. Defendants are constitutionally entitled to face their accusers, and this right should be abrogated only in the most extreme cases.

Having a child appear on television to testify in a criminal case creates several problems. When a child appears on television in a trial, juries cannot see the child as well or get the same sense of the child's attitude or demeanor as they could if the child appeared in person, making it difficult to judge the witness' credibility. Also, appearing on television can add credibility to a child's statements, whether or not they are actually true, by leading a jury to believe that the child faces some real danger that requires him or her to be out of the defendant's presence. Finally, children may have difficulty appreciating the reality and gravity of the situation when they are talking on camera outside of the courtroom and may treat the situation like a game.

SB 24
House Research Organization
page 4