

SUBJECT: Video conference testimony regarding the abuse or neglect of a child

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Uresti, Naishtat, Christian, McCall, Miller, Olivo, Reyna,
Villarreal, Wohlgemuth

0 nays

WITNESSES: For — Larry Jefferson, Texas Children's Hospital; Cecilia Longoria, Harris
County attorney

Against — None

BACKGROUND: Family Code, ch. 104, establishes the procedures for suits affecting a parent-
child relationship, including rules related to testimony and evidence.

Child Protective Services (CPS) of the Department of Protective and
Regulatory Services (DPRS) are designed to protect children from harm by
their parents or others responsible for their care. Caseworkers field and
investigate reports of child abuse and neglect. If preserving the family is not
possible or if a safe home environment cannot be established and maintained,
DPRS may petition a court to remove children from the home and place them
temporarily or permanently with substitute families or caregivers.

DIGEST: CSHB 1869 would permit a court to order the testimony of a professional to
be taken outside the courtroom by video teleconference in cases brought by
DPRS alleging abuse or neglect of a child. All parties and attorneys would be
present for the testimony and could see and hear the professional. If the court
permitted the video conferenced testimony to be admitted to the proceeding,
the professional could not be compelled to appear in court during the same
proceeding to give the same testimony, unless so ordered by the court.

The professionals to which this would apply include individuals who are
licensed or certified by the state or employees of facilities licensed by the
state who have direct contact with children, including teachers, nurses,

doctors, day-care employees, juvenile probation officers, and juvenile detention or correctional officers.

The bill would take effect September 1, 2003, and would apply to testimony taken on or after the effective date of the bill, regardless of when the allegation was made or the suit commenced.

**SUPPORTERS
SAY:**

CSHB 1869 would make children safer by ensuring that professionals could testify about their cases in an efficient manner. It also could save state money and make CPS more efficient. Testifying in a case can take up an entire day, often making it difficult for all of the doctors, nurses, social workers, and other professionals who cared for the child to attend. The bill would permit them to appear by video conference from a remote location, such as their hospital or clinic, reducing the time and hassle associated with testifying. CPS case workers also would be able to video conference their testimony, saving the state the cost of transportation and parking and freeing up their time for other cases of neglect and abuse.

Children need these professionals to report on their behalf and these professionals want to do it, but the court system makes it difficult. Doctors and nurses are needed by their patients as well as by children involved in CPS cases. It is an inefficient use of health care resources to ask these health professionals to leave their patients for an entire day to testify when much of that time is spent waiting. By allowing testimony by video conference, this bill would allow many more professionals to testify without neglecting their other duties, and would greatly decrease the likelihood that a scheduling conflict could prevent a professional from testifying, since it normally would take an hour or less to testify by video conference.

CSHB 1869 is based on a successful project in Harris County that links CPS, 23 area schools, the University of Texas - Harris County Psychiatric Center Telemedicine Network, and the Texas Children's Hospital to the Harris County juvenile courtrooms. Because video conferenced testimony is not authorized expressly in the Family Code, both sides of the case must agree to the use of video conferenced testimony. The equipment for the project was funded through federal grants. In addition to its success linking professionals to the court, the local CPS office estimates an annual savings from parking fees alone.

The bill would not compromise the defendant's rights because the all parties and attorneys would be present for the testimony and could see and hear the professional. Also, a professional could be ordered to submit the same testimony in person by the court.

Because the bill would make it easier for professionals to appear, defendants might be more willing to settle. Defense lawyers often bank on testifying professionals being unable to appear for trial and refuse to settle until they see that the professional has arrived. This wastes everyone's time and is not in the best interests of the child. If defense attorneys believed that the testifying professionals likely would appear, they might settle sooner.

It is fair to single out professionals who work with children to use video conferencing because these are special cases. Children who suffer from abuse or neglect need all of the protection they can get. This bill would ensure that the court process did not stand in the way.

**OPPONENTS
SAY:**

Texas should not permit one group of individuals to receive special treatment just because they have demanding jobs. Other professionals who are equally busy and important are required to drop everything for the entire day it could take to testify if they are compelled to do so. Those professionals also might be involved in testifying on behalf of a child in a CPS case, but would not be accommodated in the way the "professionals" in this bill would be.

Offering special treatment to one group can lead to others requesting the same. While it might make sense for Texas to accommodate doctors or teachers, the state is not ready to video conference all testimony. This bill could set a precedent for all witnesses to testify remotely, or even for the jury to listen from another location.

Texas does not need this bill because the law permits courts to do this already in a way that also protects the rights of both sides by ensuring that they agree to this special arrangement. The project in Harris County can be declared a success because defendants who do not wish to participate can refuse.

Though the statute would not require the court to order video conferencing, it might put judges under significant pressure from doctors, nurses, and case workers who would rather testify by video conference in all cases, even if the

court did not believe it was appropriate. Sometimes when an option is put in statute, it can carry the force of a right.

NOTES:

The bill as introduced differs from the committee substitute in that it would have permitted a court to order that a professional's testimony be taken outside the courtroom by videotape, rather than video conference. If the court had permitted the videotaped testimony to be admitted to the proceeding, the professional could not have been compelled to appear in court.

HB 1869 as introduced is identical to SB 1132 by Williams, which remains pending in the Senate Health and Human Services Committee.