

SUBJECT: Using video teleconferencing to enter a criminal plea.

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Denny, Escobar, Pena, Reyna

0 nays

3 absent — Hodge, P. Moreno, Raymond

SENATE VOTE: On final passage, May 3 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — None

Against — None

On — Andrea Marsh, ACLU of Texas

BACKGROUND: Under Code of Criminal Procedure, art. 27.18, a court may accept a plea or waiver of a defendant's rights by closed-circuit video teleconferencing if:

- the defendant and prosecutor file written consent with the court;
- the closed-circuit video teleconferencing system provides for a simultaneous, compressed full motion video and interactive communication of image and sound between the judge, the prosecutor, the defendant, and the defendant's attorney; and
- on request of the defendant, the defendant and the defense attorney are able to communicate privately without being recorded or heard by the judge or prosecutor.

On motion of the defendant or prosecutor, or at the court's discretion, the court can terminate an appearance by closed-circuit video teleconferencing at any time and require an appearance by the defendant in open court.

A recording must be made and preserved until all appellate proceedings have been disposed of, and the defendant may obtain a copy of the

recording on payment of a reasonable amount or, if the defendant is indigent, at no charge.

DIGEST:

SB 395 would specify that a defendant confined in a county other than the county where the charges against the defendant were pending could use teleconferencing to enter a plea or waive a right in the court with jurisdiction over the case. A defendant who did so would have to consent to venue in the county in which the court receiving the plea or waiver was located and would waive any claim of error related to venue. The bill would not prohibit a court from granting a defendant's motion for change of venue during the defendant's trial.

If a defendant entered a plea of guilty or no contest, the prosecutor could request at the time the plea was entered that the defendant submit a fingerprint suitable for attachment to the judgment. On request for a fingerprint, the county in which the defendant was confined would obtain it and use first-class mail or other means acceptable to the prosecutor to forward the fingerprint to the court accepting the plea.

The bill would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

SB 395 would be a logical extension of current law and would honor the original intent of the Legislature. In 1997, the Legislature permitted a defendant to submit a plea or a waiver of rights through broadcast by closed-circuit video teleconferencing. SB 395 would extend this provision to a defendant confined in a county other than the county in which charges were pending.

This bill would save counties money by permitting willing incarcerated defendants to use teleconferencing rather than having to transport them to another county for proceedings in open court. It can be expensive and difficult to transport defendants from jails to courthouses and move them in and out of courtrooms in a safe, efficient manner, particularly when they must be transported to another county. SB 395 would reduce these logistical problems as well as the costs to courts and local law enforcement.

Current law contains numerous safeguards to ensure that the rights of defendants are protected, and those protections would apply to out-of-county defendants as well. For example, the defendant would have to consent to the process and could communicate privately with his or her

attorney. Further, the defendant could make a motion to terminate the teleconference and appear in open court. Finally, a recording of the teleconference would have to be made, and the defendant would have the right to a copy of the video.

OPPONENTS
SAY:

SB 395 inappropriately would expand the use of video teleconferencing. That form of taking pleas makes the criminal justice system more impersonal and erodes the gravity of entering a plea in a courtroom. Through face-to-face contact, some judges are able to make a real difference in defendants' lives. Making pleas through video teleconference would be an intangible but significant change from making pleas in person.

OTHER
OPPONENTS
SAY:

The bill should make clear that defendants would have to have access to a lawyer in the arresting county. When a defendant is arrested on an out-of-county warrant, the arresting county frequently fails to provide the defendant a lawyer because that county feels the defendant should be assigned an attorney in the county where the case is pending. When this happens, the defendant frequently is not appointed a lawyer within the time frame required by law. Because this bill would allow a defendant to make a plea outside his or her county, it might, as an unintended consequence, result in defendants making plea without the opportunity to access counsel.

To remedy this problem, the bill should include a provision stating that the defendant must be allowed an opportunity to access counsel in the arresting county.