

BILL ANALYSIS

Senate Research Center

C.S.S.B. 873
By: Shapiro
Criminal Justice
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Committee Report (Substituted)

DIGEST

Currently, the statute allowing closed circuit testimony for children limits its use by restricting testimony to a child under the age of 12 who is the victim of one of several enumerated offenses, including child abuse and child sex abuse crimes. This legislation would allow the trial court to determine when it is appropriate for a child to testify by closed circuit equipment, based on the court's finding that a child is unavailable to testify in the courtroom, and would apply only to the statements or testimony of a child in a court proceeding, or to a court proceeding in which a child is a witness. The limitations barring all but certain sexual and sexually assaultive offenses would be lifted, and the court would be authorized to allow a child to testify via closed circuit in all types of cases. C.S.S.B. 873 would also require a court to consider certain relevant factors in making a determination of unavailability, and to hear evidence and make certain specific findings before authorizing the use of a closed circuit system. Finally, this bill deletes existing statutory law regarding the recording of an oral statement of a child outside of the courtroom for showing in the courtroom, and the admissibility of those recordings into evidence.

PURPOSE

As proposed, C.S.S.B. 873 establishes the manner in which the testimony of a child who is the victim of, or witness to, an alleged offense may be taken in certain criminal proceedings.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 38.071, Code of Criminal Procedure, as follows:

Art. 38.071. New heading: TESTIMONY OF CHILD VICTIM OR WITNESS

Sec. 1. Provides that this article applies only to the statements or testimony of a child 12 years of age or younger in a proceeding in the prosecution of an offense alleged to have been committed against a child 12 years of age or younger or to a proceeding in the prosecution of an offense in which a child 12 years of age or younger is a witness, and only if the trial court finds that the child is unavailable to testify in the courtroom. Deletes existing provisions making this article apply to a proceeding in the prosecution of certain offenses committed by a child 12 years of age or younger if the trial court finds that the child is unavailable to testify.

Sec. 2. Requires the court, in making a determination of unavailability, to consider the relationship of the defendant to the child; the character and duration of the alleged offense; the child's age, maturity, and emotional stability; the time elapsed since the alleged offense; and whether the child is more likely than not to be unavailable to testify because of certain factors. Provides that a determination of unavailability can be made after an earlier determination of availability, and that a determination of availability can be made after an earlier determination of unavailability. Deletes existing provisions regarding the recording of an oral statement of a child.

Sec. 3. Sets forth the terms by which the court, on a finding of good cause, is authorized to

order that the testimony of the child be taken during the trial in a room other than the courtroom and televised by closed circuit equipment. Requires a trial court to hear evidence and make certain specific findings before authorizing the use of a closed circuit system to transmit a child's testimony. Requires the court, if the closed circuit system used is a one-way system, to permit the defendant to observe and hear the testimony of the child and to communicate with his or her attorney during certain periods. Deletes existing text regarding confinement of the persons necessary to operate the equipment. Deletes the requirement that the court attempt to ensure that the child cannot hear or see the defendant. Makes conforming changes.

Sec. 4. Deletes existing Sections 4- 6 and 8-13, and redesignates former Section 7 as Section 4.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends the heading for Article 38.071, Code of Criminal Procedure.

Amends Section 1 to change the terms by which the testimony of a child who is the victim of or witness to an alleged offense may be taken in certain criminal proceedings.

Amends Section 2 to require the court to consider certain relevant factors in making a determination of unavailability. Provides that a determination of unavailability can be made after an earlier determination of availability, and a determination of availability can be made after an earlier determination of unavailability. Deletes existing text regarding the recording of an oral statement of a child.

Amends Section 3 to authorize the court, on a finding of good cause, to order that a child's testimony be taken during the trial in a room other than the courtroom and televised by closed circuit equipment in the courtroom. Requires a trial court to hear evidence and make certain specific findings before authorizing the use of a closed circuit system. Sets forth the procedure to be followed if the system is a one-way system. Deletes existing text regarding the persons necessary to operate the equipment and the court's responsibility to ensure that the child cannot hear or see the defendant.

Deletes former Sections 4-6 and 8-13, and redesignates former Section 7 as 4.