

BILL ANALYSIS

Senate Research Center
77R3726 GWK-F

C.S.S.B. 24
By: Shapiro
Criminal Justice
2/1/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Texas law provides no opportunity for a judge to allow a child, who is the witness to criminal activity, to testify outside of the presence of the accused. C.S.S.B. 24 gives a court the authority to hold a hearing or proceeding to allow a child, younger than 13, to testify outside the presence of the accused.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1, Article 38.071, Code of Criminal Procedure, to provide that this article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify about an offense in the presence of the defendant. Sets forth certain sections of the Penal Code regarding murder, capital murder, manslaughter, aggravated kidnapping, indecency with a child, sexual assault, aggravated assault, aggravated sexual assault, and injury to a child, elderly individual, or disabled individual, if the conduct is committed intentionally or knowingly, and prohibited sexual conduct, aggravated robbery, or sexual performance by a child that define the offense to which this section applies. Deletes text regarding an offense committed against a child 12 years of age or younger.

SECTION 2. Amends Section 2(c), Article 38.071, Code of Criminal Procedure, to provide that a recording made under Subsection (a) of this section is not admissible into evidence unless a recording made under Subsection (b) is admitted at the same time if a recording under Subsection (b) was requested prior to the time of the hearing or proceeding, rather than trial.

SECTION 3. Amends Section 3(a), Article 38.071, Code of Criminal Procedure, to delete text regarding testimony of the child taken during the trial.

SECTION 4. Amends Sections 4(a) and (b), Article 38.071, Code of Criminal Procedure, to delete language regarding an indictment or a complaint charging the defendant with an offense to which this article applies.

SECTION 5. Amends Sections 5(a) and (b), Article 38.071, Code of Criminal Procedure, to make conforming changes.

SECTION 6. Amends Section 8(a), Article 38.071, Code of Criminal Procedure, to delete language regarding the child's ordinary involvement as complainant in the courtroom trial. Makes a conforming change.

SECTION 7. Amends Section 9, Article 38.071, Code of Criminal Procedure, to make a conforming change.

SECTION 8. Amends Section 10, Article 38.071, Code of Criminal Procedure, to require the court to

take all reasonable steps necessary and available to minimize undue psychological trauma to the child and to minimize the emotional and physical stress to the child caused by the defendant and the ordinary participation of the witness, rather than the complainant, in the courtroom.

SECTION 9. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Amends As Filed S.B. 24, Section 1, Article 38.071, Code of Criminal Procedure, to combine Subsections (1) and (2) of the original to provide that this article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant. Sets forth certain sections of the Penal Code regarding murder, capital murder, manslaughter, aggravated kidnapping, indecency with a child, sexual assault, aggravated assault, aggravated sexual assault, and injury to a child, elderly individual, or disabled individual, if the conduct is committed intentionally or knowingly, and prohibited sexual conduct, aggravated robbery, or sexual performance by a child that define the offense to which this section applies.