

BILL ANALYSIS

Senate Research Center
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H.B. 2847
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Criminal Justice
5/19/2011
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This legislation seeks to maximize the use of video teleconferencing technology in legal proceedings in which an inmate is required to provide testimony so as to minimize the transportation of such an inmate to and from the legal proceedings.

H.B. 2847 amends current law relating to the use of video teleconferencing systems in certain criminal proceedings.

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 Article 1.13(a), Code of Criminal Procedure, to provide that the defendant in a criminal prosecution for any offense other than a capital felony case in which the state notifies the court and the defendant that it will seek the death penalty is required to have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that, except as provided by Article 27.19 (Plea by Certain Defendants), the waiver is required to be made in person by the defendant in writing in open court with the consent and approval of the court, and the attorney representing the state.

SECTION 2. Amends Article 20.011(a), Code of Criminal Procedure, to authorize only certain persons to be present in a grand jury room while the grand jury is conducting proceedings, including a person operating a video teleconferencing system for use under Article 20.151.

SECTION 3. Amends Article 20.02(b), Code of Criminal Procedure, to provide that a grand juror, bailiff, interpreter, stenographer or person operating an electronic recording device, person preparing a typewritten transcription of a stenographic or electronic recording, or person operating a video teleconferencing system for use under Article 20.151 who discloses anything transpiring before the grand jury, regardless of whether the thing transpiring is recorded, in the course of the official duties of the grand jury, is liable to a fine as for contempt of the court, not exceeding \$500, imprisonment not exceeding 30 days, or both the fine and imprisonment.

SECTION 4. Amends Chapter 20, Code of Criminal Procedure, by adding Article 20.151, as follows:

Art. 20.151. CERTAIN TESTIMONY BY VIDEO TELECONFERENCING. (a) Authorizes a peace officer summoned to testify before the grand jury, with the consent of the foreman of the grand jury and the attorney representing the state, to testify through the use of a closed circuit video teleconferencing system that provides an encrypted, simultaneous, compressed full motion video and interactive communication of image and sound between the peace officer, the attorney representing the state, and the grand jury.

(b) Requires a peace officer testifying through the use of a closed circuit video teleconferencing system under this article, in addition to being administered the

oath described by Article 20.16(a) (relating to the oath administered by the foreman), before being interrogated, to affirm that:

(1) no person other than a person in the grand jury room is capable of hearing the peace officer's testimony; and

(2) the peace officer's testimony is not being recorded or otherwise preserved by any person at the location from which the peace officer is testifying.

(c) Requires that testimony received from a peace officer under this article be recorded in the same manner as other testimony taken before the grand jury.

SECTION 5. Amends Article 27.18, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Provides that a court reporter or court recorder is not required to transcribe or make a separate recording of a plea taken under this article.

(c-1) Creates this subsection from existing text. Provides that the defendant is authorized to obtain a copy of a recording made under Subsection (c) on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court is required to provide a copy to the defendant without charging a cost for the copy.

(c-2) Provides that the loss or destruction of or failure to make a video recording of a plea entered under this article is not alone sufficient grounds for a defendant to withdraw the defendant's plea or to request the court to set aside a conviction or sentence based on the plea.

SECTION 6. Amends Article 38.073, Code of Criminal Procedure, to authorize any deposition or testimony of an inmate witness, in a proceeding in the prosecution of a criminal offense in which an inmate in the custody of the Texas Department of Criminal Justice is required to testify as a witness, to be conducted by a video teleconferencing system in the manner described by Article 27.18 (Plea or Waiver of Rights by Closed Circuit Video Teleconferencing), rather than by electronic means, in the same manner as permitted in civil cases under Section 30.012 (Use of Communication Equipment in Certain Proceedings), Civil Practice and Remedies Code.

SECTION 7. Provides that Articles 20.011(a) and 20.02(b), Code of Criminal Procedure, as amended by this Act, and Article 20.151, Code of Criminal Procedure, as added by this Act, apply only to testimony before a grand jury that is impaneled on or after the effective date of this Act.

SECTION 8. Provides that Article 27.18, Code of Criminal Procedure, as amended by this Act, applies to a plea of guilty or nolo contendere entered on or after the effective date of this Act, regardless of whether the offense with reference to which the plea is entered is committed before, on, or after that date.

SECTION 9. Provides that Article 38.073, Code of Criminal Procedure, as amended by this Act, applies only to the testimony of an inmate witness that is taken on or after the effective date of this Act.

SECTION 10. Effective date: September 1, 2011.

SUMMARY OF COMMITTEE CHANGES

(1) Amends SECTION 5, on page 3, lines 20 through 21, by striking "Subsections (c-1) and (c-2)" and substituting "Subsection (c-1)".

(2) Amends SECTION 5, by striking the language beginning on page 3, line 22, and ending on page 4, line 3, and substituting the following:

(c) A record [~~recording~~] of the communication shall be made by a court reporter and preserved by the court reporter until all appellate proceedings have been disposed of. The defendant may obtain a copy of the record [~~recording~~] on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

(3) Amends SECTION 5, page 4, line, 4, by striking "(c-2)" and substituting "(c-1)".

(4) Amends SECTION 5, page 4, lines 4 through 5, by striking "video recording" and substituting "record".

(5) Adds the following appropriately numbered SECTION to the bill and renumbers existing SECTIONS of the bill accordingly:

SECTION _____. Article 102, 017(d-1), Code of Criminal Procedure, is amended to read as follows:

(d-1) For purposes of this article, the term "security personnel, services, and items" includes:

(1) the purchase or repair of X-ray machines and conveying systems;

(2) handheld metal detectors;

(3) walkthrough metal detectors;

(4) identification cards and systems;

(5) electronic locking and surveillance equipment;

(6) video teleconferencing systems;

(7) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;

(8) [~~(7)~~] signage;

(9) [~~(8)~~] confiscated weapon inventory and tracking systems;

(10) [~~(9)~~] locks, chains, alarms, or similar security devices;

(11) [~~(10)~~] the purchase or repair of bullet-proof glass; and

(12) [~~(11)~~] continuing education on security issues for court personnel and security personnel.