SUBJECT: Closing juvenile hearings involving child under 14 to the public

COMMITTEE: Juvenile Justice and Family Issues — favorable, with amendment

VOTE: 5 ayes — Goodman, J. Jones, McClendon, McReynolds, A. Reyna

2 nays — Staples, Smith

2 absent — Naishtat, Williams

WITNESSES: For — Keith V. Branch, National Association of Blacks in Criminal Justice; Jack E. Hunter; Frank Garrett, Jr.; Jocelyn McIntosh-Taylor

Against — Don R. Richards, Freedom of Information Foundation of Texas

BACKGROUND: The Family Code requires a juvenile court judge to open hearings to the public unless the judge, for good cause shown, determines that the public should be excluded. The judge may not prohibit a victim of the child's conduct from personally attending a hearing relating to that conduct unless the victim is to testify in any related hearing and the judge determines that the victim's testimony would be materially affected by hearing other testimony at trial.

DIGEST: HB 2102, as amended, would require a juvenile court judge to close hearings regarding the conduct of a child under the age of 14 unless the judge found that the interests of the child or the public would be better served by opening the hearing to the public.

The bill also would extend the rights to and limitations on attending hearings to family members of victims.

HB 2102 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house, and would apply only to a juvenile court hearing commenced on or after the effective date of the bill.

SUPPORTERS SAY:

HB 2102 would protect children under 14 who have not been adjudicated from being stigmatized or branded guilty by media coverage of their hearings. In a recent case in Austin, television coverage was so extensive that the 12-year-old involved was shown nightly on newscasts. Unfortunately, this case is not an isolated occurrence — similar problems have arisen in many communities throughout the state. A verdict of not guilty cannot dispel the stigma or repair the damage done to the life and future of a child who has already been "tried" and found guilty by the media. Children are entitled to a true presumption of innocence and should be tried in court, not by the media. And if they are found guilty, sentence should be pronounced in a dispassionate manner, not in a media circus. The focus should be on rehabilitation, a difficult goal when media coverage creates a stigma that lasts longer than the punishment for the offense.

The bill would balance the rights of children with the public's right of access to court proceedings. It would not close the courtroom completely; judges would have discretion to open a hearing to the public if it would better serve the interests of the public or be in the best interests of the child. However, some judges are more sensitive to the needs of the media than to the needs of children, so it is necessary to maintain the presumption of a closed court.

HB 2102 would refocus the attention of a juvenile court on the involved parties, and extend to family members of a victim the right to attend a hearing. Family members have been deeply affected by the conduct of the child, and they should have the right to attend hearings unless any future testimony would be affected.

OPPONENTS SAY:

The presumption of an open court in all juvenile cases must be maintained because the foundation of the criminal justice system is a speedy*public* trial. A public trial meets the interests of both the defendant and the public. It protects a defendant, because a closed hearing may be used to hide improper conduct by the court, attorneys, or other involved parties, yet also serves the public, which has a right to know about the depth and seriousness of juvenile crime. As representatives of the public, the media deserve admittance to court proceedings.

The current system works well and should not be changed. Judges have the discretion to close hearings when there is good cause. If they decide to

leave a hearing open to the public, they can make rules governing media coverage and enforce those rules. For example, a judge once found a news channel in contempt of court for showing a child against the court's rules and barred that news channel from the courtroom.

In reality, media coverage is very rarely a problem at juvenile hearings. One juvenile judge in a major city received only one request to close a hearing in a 10-year period. HB 2102 apparently was motivated by a perceived injustice involved in a single Austin case. A fundamental shift in the law should not be based on isolated incidents.

Maintaining open hearings helps deter juvenile crime. Juveniles must understand that if they commit crimes, they may be held up to public scrutiny. Many juveniles are aware and take advantage of those areas of the law where they are treated differently from adults.

HB 2102 would exclude the media from a public courthouse, violating at least the spirit of the Freedom of Information Act. Most media have shown laudable restraint in juvenile matters and already have editorial policies in place that adequately guard against publishing the names or photographs of juvenile offenders.

NOTES:

The committee amendment would require courts to close hearings relating to children under the age of 14 absent compelling circumstances to do otherwise.