

SUBJECT: Use of video teleconferencing systems in certain criminal proceedings

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Gallego, Christian, Fletcher, Miklos, Moody, Pierson, Vaught, Vo

0 nays

3 absent — Hodge, Kent, Riddle

WITNESSES: (*On original version:*)

For — John Roach, Collin County; (*Registered, but did not testify:* John Chancellor, Texas Police Chiefs Association; Mark Mendez, Tarrant County; Michael Vasquez, Texas Conference of Urban Counties)

Against — None

On — Melinda Bozarth, Texas Department of Criminal Justice

BACKGROUND: A defendant in a criminal case, for any offense other than a capital offense in which the prosecutor is seeking the death penalty, may waive the right to a jury trial upon entering a plea if the defendant makes the waiver in writing in open court with the consent of the court and the state attorney.

Code of Criminal Procedure, sec. 27.18 provides that a court may accept a defendant's plea or waiver of rights by broadcast by closed circuit video teleconferencing under certain circumstances. A recording of the communications must be made and preserved until all appellate proceedings have been disposed of.

Code of Criminal Procedure, ch. 20 explains the duties and powers of the grand jury, including who may be present during grand jury proceedings, and who must keep secret the proceedings of a grand jury. Any person required to keep the proceedings secret who discloses anything transpiring before the grand jury is liable to a fine for contempt of court, not to exceed \$500, imprisonment for not more than 30 days, or both.

In a criminal prosecution proceeding in which an inmate in Texas Department of Criminal Justice (TDCJ) custody is required to testify, any deposition or testimony may be conducted by electronic means.

DIGEST:

CSHB 1480 would amend Code of Criminal Procedure, ch. 20 by adding sec. 20.151, which would provide that a peace officer summoned to give grand jury testimony could testify through the use of a closed circuit video teleconferencing system if:

- the grand jury foreman and state attorney consented; and
- the system provided encrypted, simultaneous, compressed full motion video and interactive communication of image and sound between the peace officer, state attorney, and grand jury.

The peace officer would have to affirm that no one other than those in the grand jury room could hear the officer's testimony and that the officer's testimony was not being recorded by any person at the officer's location.

A person operating a video teleconferencing system to teleconference a peace officer's testimony at a grand jury proceeding would be permitted to be present during a grand jury proceeding and would be prohibited from disclosing anything transpiring before the grand jury.

In a criminal prosecution proceeding in which an inmate in TDCJ custody was required to testify, any deposition or testimony could be conducted by a video teleconferencing system, in accordance with the terms of Code of Criminal Procedure, art. 27.18.

Code of Criminal Procedure, ch. 27 would be amended by adding sec. 27.19 to require a court to accept a plea of guilty or nolo contendere by video teleconferencing under art. 27.18 from an inmate incarcerated at a TDCJ facility, after receiving a written waiver of jury trial signed by the defendant.

Code of Criminal Procedure, art. 27.18 would be amended to provide that a court reporter or recorder was not required to record a plea by broadcast by closed circuit video teleconferencing, unless the defendant or state attorney requested the presence of a court reporter or recorder. The loss or destruction of or failure to make a video recording of such a plea would not alone be sufficient grounds for a defendant to withdraw the plea or to request the court to set aside a conviction or sentence based on the plea.

The bill would take effect September 1, 2009, and would apply only to pleas entered and testimony before a grand jury impaneled on or after this date.