

BILL ANALYSIS

Senate Research Center

S.B. 873
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Criminal Justice
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As Filed

DIGEST

Currently, the statute allowing closed circuit testimony for children limits its use by restricting testimony to a child under the age of 13 who is the victim of one of several enumerated offenses, including child abuse and child sex abuse crimes, and only in the event that there is a trial. This legislation would allow the 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 presence of the defendant. The equipment could be used in any type of courtroom proceeding, including revocation and adjudication hearings, and the limitations barring all but certain sexual and sexually assaultive offenses would be lifted. S.B. 873 would allow a child to testify via closed circuit in all types of cases, including murder and capital murder cases, whether the child is a witness or a victim.

PURPOSE

As proposed, 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 Section 1, Article 38.071, Code of Criminal Procedure, to provide that this article applies only to a hearing or proceeding in which a child younger than 13 years of age testifies about an offense and the court finds that the child is unavailable to testify in the presence of the defendant. 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.

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

SECTION 3. Amends Section 3(a), Article 38.071, Code of Criminal Procedure, to set forth the terms by which the court is authorized to order that the testimony of the child be taken in certain rooms and televised by closed circuit equipment, rather than being taken during the trial under the same circumstances.

SECTION 4. Amends Sections 4(a) and (b), Article 38.071, Code of Criminal Procedure, to make conforming changes.

SECTION 5. Amends Sections 5(a) and (b), Article 38.071, Code of Criminal Procedure, to set forth the terms by which the recording of an oral statement of the child made before a complaint has been filed or an indictment returned is admissible into evidence if the person conducting the interview of the child in the recording is called by the state, rather than called by the state as part of the state's case in chief to testify at trial; and the attorney representing the state notified the attorney representing the defendant of the existence of the recording, rather than notifying the same that the

recording may be used at the trial of the offense. Makes conforming changes.

SECTION 6. Amends Section 8(a), Article 38.071, Code of Criminal Procedure, to delete the requirement that the court, in making a determination of unavailability, consider whether the child is more likely than not to be unavailable to testify because of emotional or physical causes, including the ordinary involvement as complainant in the courtroom trial. Makes conforming changes.

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, in ordering a child to testify, to take all reasonable steps necessary and available to minimize psychological trauma to the child caused by factors such as the ordinary participation of the witness, rather than complainant, in the courtroom.

SECTION 9. Effective date: September 1, 1997.

SECTION 10. Emergency clause.