

By: Leach

H.B. No. 4622

A BILL TO BE ENTITLED

AN ACT

relating to the manner in which certain criminal and juvenile proceedings are conducted.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1, Code of Criminal Procedure, is amended by adding Article 1.027 to read as follows:

Art. 1.027. PROCEEDINGS BY VIDEOCONFERENCE. (a) Except as provided by Subsection (b), a court may conduct all or part of a proceeding under this code by videoconference, and may allow or require any party, attorney, witness, court reporter, juror, or other participant in a proceeding under this code to participate by videoconference in the proceeding, if:

(1) the videoconference provides for a simultaneous, compressed full motion video and for interactive communication of image and sound between the judge, the attorney representing the state, the defendant, and the defendant's attorney; and

(2) on request of the defendant, the defendant and the defendant's attorney are able to communicate privately without being recorded or heard by the judge or the attorney representing the state.

(b) The defendant and the attorney representing the state must file with the court written consent to the use of videoconference if:

(1) the applicable proceeding is a contested matter

1 involving witness testimony; or
2 (2) the United States Constitution or the Texas
3 Constitution otherwise requires that consent.

4 SECTION 2. Article 1.13(a), Code of Criminal Procedure, is
5 amended to read as follows:

6 (a) The defendant in a criminal prosecution for any offense
7 other than a capital felony case in which the state notifies the
8 court and the defendant that it will seek the death penalty shall
9 have the right, upon entering a plea, to waive the right of trial by
10 jury, conditioned, however, that~~[, except as provided by Article~~
11 ~~27.19,~~] the waiver must be made [~~in person~~] by the defendant in
12 writing in open court with the consent and approval of the court,
13 and the attorney representing the state. The consent and approval
14 by the court shall be entered of record on the minutes of the court,
15 and the consent and approval of the attorney representing the state
16 shall be in writing, signed by that attorney, and filed in the
17 papers of the cause before the defendant enters the defendant's
18 plea.

19 SECTION 3. Article 1.15, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 1.15. JURY IN FELONY. No person can be convicted of a
22 felony except upon the verdict of a jury duly rendered and recorded,
23 unless the defendant, upon entering a plea, has in open court [~~in~~
24 ~~person~~] waived the defendant's [~~his~~] right of trial by jury in
25 writing in accordance with Articles 1.13 and 1.14; provided,
26 however, that it shall be necessary for the state to introduce
27 evidence into the record showing the guilt of the defendant and said

1 evidence shall be accepted by the court as the basis for its
2 judgment and in no event shall a person charged be convicted upon
3 the defendant's ~~[his]~~ plea without sufficient evidence to support
4 the same. The evidence may be stipulated if the defendant in such
5 case consents in writing, in open court, to waive the appearance,
6 confrontation, and cross-examination of witnesses, and further
7 consents either to an oral stipulation of the evidence and
8 testimony or to the introduction of testimony by affidavits,
9 written statements of witnesses, and any other documentary evidence
10 in support of the judgment of the court. Such waiver and consent
11 must be approved by the court in writing, and be filed in the file of
12 the papers of the cause.

13 SECTION 4. Article 27.13, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 27.13. PLEA OF GUILTY OR NOLO CONTENDERE IN FELONY. A
16 plea of "guilty" or a plea of "nolo contendere" in a felony case
17 must be made in open court by the defendant ~~[in person]~~; and the
18 proceedings shall be as provided in Articles 26.13, 26.14 and
19 27.02. If the plea is before the judge alone, same may be made in
20 the same manner as is provided for by Articles 1.13 and 1.15.

21 SECTION 5. Articles 27.18(a), (b), and (d), Code of
22 Criminal Procedure, are amended to read as follows:

23 (a) A ~~[Notwithstanding any provision of this code requiring~~
24 ~~that a plea or a waiver of a defendant's right be made in open court,~~
25 ~~a]~~ court may accept the plea or waiver by videoconference to the
26 court if:

27 (1) ~~[the defendant and the attorney representing the~~

1 ~~state file with the court written consent to the use of~~
2 ~~videoconference;~~

3 ~~(2)~~ the videoconference provides for a
4 simultaneous, compressed full motion video~~[7]~~ and for interactive
5 communication of image and sound between the judge, the attorney
6 representing the state, the defendant, and the defendant's
7 attorney; and

8 (2) ~~(3)~~ on request of the defendant, the defendant
9 and the defendant's attorney are able to communicate privately
10 without being recorded or heard by the judge or the attorney
11 representing the state.

12 (b) Notwithstanding any other law, on ~~On~~ motion of the
13 defendant or the attorney representing the state or in the court's
14 discretion, the court may terminate an appearance by
15 videoconference at any time during the appearance and require an
16 appearance by the defendant in person in open court.

17 (d) For a ~~A~~ defendant who is confined in a county other
18 than the county in which charges against the defendant are pending,
19 ~~may use~~ the videoconference method provided by this article or by
20 Article 15.17 may be used to allow the entry of ~~to enter~~ a plea or
21 the waiver of ~~waive~~ a right in the court with jurisdiction over
22 the case.

23 SECTION 6. Article 27.19(a), Code of Criminal Procedure, is
24 amended to read as follows:

25 (a) Notwithstanding any other provision of this code, a
26 court shall accept a plea of guilty or nolo contendere from a
27 defendant who is confined in a penal institution if the plea is

1 made:

2 (1) in accordance with the procedure established by
3 Article 27.18; or

4 (2) in writing, including a writing delivered by
5 United States mail or secure electronic or facsimile transmission,
6 before the appropriate court having jurisdiction in the county in
7 which the penal institution is located, provided that:

8 (A) the defendant is notified by the court of
9 original jurisdiction of the right to counsel and the procedures
10 for requesting appointment of counsel, and is provided a reasonable
11 opportunity to request a court-appointed lawyer;

12 (B) if the defendant elects to proceed without
13 counsel, the defendant must waive the right to counsel in
14 accordance with Article 1.051; and

15 (C) ~~[the defendant must waive the right to be~~
16 ~~present at the taking of the plea or to have counsel present, if the~~
17 ~~defendant has counsel, and~~

18 ~~[(D)]~~ if the defendant is charged with a felony,
19 judgment and sentence are rendered in accordance with the
20 conditions and the procedure established by Article 42.14(b).

21 SECTION 7. Chapter 51, Family Code, is amended by adding
22 Section 51.055 to read as follows:

23 Sec. 51.055. PROCEEDINGS BY VIDEOCONFERENCE. (a) Except
24 as provided by Subsection (b), a juvenile court may conduct all or
25 part of a hearing or other proceeding under this title by
26 videoconference, and may allow or require any party, attorney,
27 witness, court reporter, juror, or other participant in a

1 proceeding under this title to participate by videoconference in
2 the proceeding, if:

3 (1) the videoconference provides for a simultaneous,
4 compressed full motion video and for interactive communication of
5 image and sound between the judge, the attorney representing the
6 state, the child, and the child's attorney; and

7 (2) on request of the child, the child and the child's
8 attorney are able to communicate privately without being recorded
9 or heard by the judge or the attorney representing the state.

10 (b) The child and the attorney representing the state must
11 file with the juvenile court written consent to the use of
12 videoconference if:

13 (1) the applicable proceeding is a contested matter
14 involving witness testimony; or

15 (2) the United States Constitution or the Texas
16 Constitution otherwise requires that consent.

17 (c) The Office of Court Administration of the Texas Judicial
18 System shall provide guidance and assistance to the extent possible
19 to a juvenile court conducting by videoconference a proceeding
20 involving a jury.

21 (d) The judge of a juvenile court shall submit to the Office
22 of Court Administration of the Texas Judicial System a plan for
23 conducting proceedings under this title by videoconference. The
24 plan must:

25 (1) include protocols for handling physical evidence;
26 and

27 (2) require an unobstructed view of any party or

1 witness who provides testimony from a location that is different
2 from the location for the proceeding.

3 SECTION 8. Section 54.012(a), Family Code, is amended to
4 read as follows:

5 (a) A detention hearing under Section 54.01 may be held
6 using interactive video equipment if[+]

7 [~~(1) the child and the child's attorney agree to the~~
8 ~~video hearing; and~~

9 [(2)] the parties to the proceeding have the
10 opportunity to cross-examine witnesses. Consent of the parties is
11 not required for the detention hearing to be held in the manner
12 specified by this subsection, except as provided by Section
13 51.055(b).

14 SECTION 9. Section 54.012(b), Family Code, is repealed.

15 SECTION 10. The change in law made by this Act applies to a
16 proceeding that commences on or after the effective date of this
17 Act. A proceeding that commences before the effective date of this
18 Act is governed by the law in effect on the date the proceeding
19 commenced, and the former law is continued in effect for that
20 purpose.

21 SECTION 11. This Act takes effect September 1, 2023.