

By: Madden

H.B. No. 2847

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the use of video teleconferencing systems in certain  
3 criminal proceedings.

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

5 SECTION 1. Article 1.13(a), Code of Criminal Procedure, is  
6 amended to read as follows:

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

20 SECTION 2. Article 20.011(a), Code of Criminal Procedure,  
21 is amended to read as follows:

22 (a) Only the following persons may be present in a grand  
23 jury room while the grand jury is conducting proceedings:

- 24 (1) grand jurors;

- 1           (2) bailiffs;
- 2           (3) the attorney representing the state;
- 3           (4) witnesses while being examined or when necessary
- 4 to assist the attorney representing the state in examining other
- 5 witnesses or presenting evidence to the grand jury;
- 6           (5) interpreters, if necessary; ~~and~~
- 7           (6) a stenographer or person operating an electronic
- 8 recording device, as provided by Article 20.012; and
- 9           (7) a person operating a video teleconferencing system
- 10 for use under Article 20.151.

11           SECTION 3. Article 20.02(b), Code of Criminal Procedure, is

12 amended to read as follows:

13           (b) A grand juror, bailiff, interpreter, stenographer or

14 person operating an electronic recording device, ~~or~~ person

15 preparing a typewritten transcription of a stenographic or

16 electronic recording, or person operating a video teleconferencing

17 system for use under Article 20.151 who discloses anything

18 transpiring before the grand jury, regardless of whether the thing

19 transpiring is recorded, in the course of the official duties of the

20 grand jury, is ~~shall be~~ liable to a fine as for contempt of the

21 court, not exceeding \$500 ~~[five hundred dollars]~~, imprisonment not

22 exceeding 30 ~~[thirty]~~ days, or both the ~~[such]~~ fine and

23 imprisonment.

24           SECTION 4. Chapter 20, Code of Criminal Procedure, is

25 amended by adding Article 20.151 to read as follows:

26           Art. 20.151. CERTAIN TESTIMONY BY VIDEO TELECONFERENCING.

27           (a) With the consent of the foreman of the grand jury and the

1 attorney representing the state, a peace officer summoned to  
2 testify before the grand jury may testify through the use of a  
3 closed circuit video teleconferencing system that provides an  
4 encrypted, simultaneous, compressed full motion video and  
5 interactive communication of image and sound between the peace  
6 officer, the attorney representing the state, and the grand jury.

7 (b) In addition to being administered the oath described by  
8 Article 20.16(a), before being interrogated, a peace officer  
9 testifying through the use of a closed circuit video  
10 teleconferencing system under this article shall affirm that:

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

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

16 (c) Testimony received from a peace officer under this  
17 article shall be recorded in the same manner as other testimony  
18 taken before the grand jury.

19 SECTION 5. Article 27.18, Code of Criminal Procedure, is  
20 amended by amending Subsection (c) and adding Subsections (c-1) and  
21 (c-2) to read as follows:

22 (c) A recording of the communication shall be made and  
23 preserved until all appellate proceedings have been disposed of. A  
24 court reporter or court recorder is not required to transcribe or  
25 make a separate recording of a plea taken under this article.

26 (c-1) The defendant may obtain a copy of a [the] recording  
27 made under Subsection (c) on payment of a reasonable amount to cover

1 the costs of reproduction or, if the defendant is indigent, the  
2 court shall provide a copy to the defendant without charging a cost  
3 for the copy.

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

9 SECTION 6. Article 38.073, Code of Criminal Procedure, is  
10 amended to read as follows:

11 Art. 38.073. TESTIMONY OF INMATE WITNESSES. In a  
12 proceeding in the prosecution of a criminal offense in which an  
13 inmate in the custody of the Texas Department of Criminal Justice is  
14 required to testify as a witness, any deposition or testimony of the  
15 inmate witness may be conducted by a video teleconferencing system  
16 in the manner described by Article 27.18 [~~electronic means, in the~~  
17 ~~same manner as permitted in civil cases under Section 30.012, Civil~~  
18 ~~Practice and Remedies Code~~].

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

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

1 committed before, on, or after that date.

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

5           SECTION 10. This Act takes effect September 1, 2011.