

1-1 By: Madden (Senate Sponsor - Whitmire) H.B. No. 2847
1-2 (In the Senate - Received from the House May 4, 2011;
1-3 May 5, 2011, read first time and referred to Committee on Criminal
1-4 Justice; May 20, 2011, reported favorably, as amended, by the
1-5 following vote: Yeas 7, Nays 0; May 20, 2011, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Whitmire

1-7 Amend H.B. No. 2847 (house engrossment) as follows:

1-8 (1) On page 2, lines 57-58, strike "Subsections (c-1) and
1-9 (c-2)" and substitute "Subsection (c-1)".

1-10 (2) Strike the language beginning on page 2, line 59, and
1-11 ending on page 2, line 62, and substitute the following:

1-12 (c) A record [~~recording~~] of the communication shall be made
1-13 by a court reporter and preserved by the court reporter until all
1-14 appellate proceedings have been disposed of. The defendant may
1-15 obtain a copy of the record [~~recording~~] on payment of a reasonable
1-16 amount to cover the costs of reproduction or, if the defendant is
1-17 indigent, the court shall provide a copy to the defendant without
1-18 charging a cost for the copy.

1-19 (3) On page 2, line 68, strike "(c-2)" and substitute
1-20 "(c-1)".

1-21 (4) On page 2, lines 68-69, strike "video recording" and
1-22 substitute "record".

1-23 (5) Add the following appropriately numbered SECTION to the
1-24 bill and renumber existing SECTIONS of the bill accordingly:

1-25 SECTION _____. Article 102.017(d-1), Code of Criminal
1-26 Procedure, is amended to read as follows:

1-27 (d-1) For purposes of this article, the term "security
1-28 personnel, services, and items" includes:

1-29 (1) the purchase or repair of X-ray machines and
1-30 conveying systems;

1-31 (2) handheld metal detectors;

1-32 (3) walkthrough metal detectors;

1-33 (4) identification cards and systems;

1-34 (5) electronic locking and surveillance equipment;

1-35 (6) video teleconferencing systems;

1-36 (7) bailiffs, deputy sheriffs, deputy constables, or
1-37 contract security personnel during times when they are providing
1-38 appropriate security services;

1-39 (8) [~~(7)~~] signage;

1-40 (9) [~~(8)~~] confiscated weapon inventory and tracking
1-41 systems;

1-42 (10) [~~(9)~~] locks, chains, alarms, or similar security
1-43 devices;

1-44 (11) [~~(10)~~] the purchase or repair of bullet-proof
1-45 glass; and

1-46 (12) [~~(11)~~] continuing education on security issues
1-47 for court personnel and security personnel.

1-48 A BILL TO BE ENTITLED
1-49 AN ACT

1-50 relating to the use of video teleconferencing systems in certain
1-51 criminal proceedings.

1-52 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-53 SECTION 1. Article 1.13(a), Code of Criminal Procedure, is
1-54 amended to read as follows:

1-55 (a) The defendant in a criminal prosecution for any offense
1-56 other than a capital felony case in which the state [~~State~~] notifies
1-57 the court and the defendant that it will seek the death penalty
1-58 shall have the right, upon entering a plea, to waive the right of
1-59 trial by jury, conditioned, however, that, except as provided by
1-60 Article 27.19, the [~~such~~] waiver must be made in person by the
1-61 defendant in writing in open court with the consent and approval of
1-62 the court, and the attorney representing the state [~~State~~]. The

2-1 consent and approval by the court shall be entered of record on the
 2-2 minutes of the court, and the consent and approval of the attorney
 2-3 representing the state [State] shall be in writing, signed by that
 2-4 attorney [him], and filed in the papers of the cause before the
 2-5 defendant enters the defendant's [his] plea.

2-6 SECTION 2. Article 20.011(a), Code of Criminal Procedure,
 2-7 is amended to read as follows:

2-8 (a) Only the following persons may be present in a grand
 2-9 jury room while the grand jury is conducting proceedings:

- 2-10 (1) grand jurors;
- 2-11 (2) bailiffs;
- 2-12 (3) the attorney representing the state;
- 2-13 (4) witnesses while being examined or when necessary
 2-14 to assist the attorney representing the state in examining other
 2-15 witnesses or presenting evidence to the grand jury;
- 2-16 (5) interpreters, if necessary; ~~and~~
- 2-17 (6) a stenographer or person operating an electronic
 2-18 recording device, as provided by Article 20.012; and
- 2-19 (7) a person operating a video teleconferencing system
 2-20 for use under Article 20.151.

2-21 SECTION 3. Article 20.02(b), Code of Criminal Procedure, is
 2-22 amended to read as follows:

2-23 (b) A grand juror, bailiff, interpreter, stenographer or
 2-24 person operating an electronic recording device, ~~or~~ person
 2-25 preparing a typewritten transcription of a stenographic or
 2-26 electronic recording, or person operating a video teleconferencing
 2-27 system for use under Article 20.151 who discloses anything
 2-28 transpiring before the grand jury, regardless of whether the thing
 2-29 transpiring is recorded, in the course of the official duties of the
 2-30 grand jury, is [shall be] liable to a fine as for contempt of the
 2-31 court, not exceeding \$500 [five hundred dollars], imprisonment not
 2-32 exceeding 30 [thirty] days, or both the [such] fine and
 2-33 imprisonment.

2-34 SECTION 4. Chapter 20, Code of Criminal Procedure, is
 2-35 amended by adding Article 20.151 to read as follows:

2-36 Art. 20.151. CERTAIN TESTIMONY BY VIDEO TELECONFERENCING.

2-37 (a) With the consent of the foreman of the grand jury and the
 2-38 attorney representing the state, a peace officer summoned to
 2-39 testify before the grand jury may testify through the use of a
 2-40 closed circuit video teleconferencing system that provides an
 2-41 encrypted, simultaneous, compressed full motion video and
 2-42 interactive communication of image and sound between the peace
 2-43 officer, the attorney representing the state, and the grand jury.

2-44 (b) In addition to being administered the oath described by
 2-45 Article 20.16(a), before being interrogated, a peace officer
 2-46 testifying through the use of a closed circuit video
 2-47 teleconferencing system under this article shall affirm that:

2-48 (1) no person other than a person in the grand jury
 2-49 room is capable of hearing the peace officer's testimony; and

2-50 (2) the peace officer's testimony is not being
 2-51 recorded or otherwise preserved by any person at the location from
 2-52 which the peace officer is testifying.

2-53 (c) Testimony received from a peace officer under this
 2-54 article shall be recorded in the same manner as other testimony
 2-55 taken before the grand jury.

2-56 SECTION 5. Article 27.18, Code of Criminal Procedure, is
 2-57 amended by amending Subsection (c) and adding Subsections (c-1) and
 2-58 (c-2) to read as follows:

2-59 (c) A recording of the communication shall be made and
 2-60 preserved until all appellate proceedings have been disposed of. A
 2-61 court reporter or court recorder is not required to transcribe or
 2-62 make a separate recording of a plea taken under this article.

2-63 (c-1) The defendant may obtain a copy of a [the] recording
 2-64 made under Subsection (c) on payment of a reasonable amount to cover
 2-65 the costs of reproduction or, if the defendant is indigent, the
 2-66 court shall provide a copy to the defendant without charging a cost
 2-67 for the copy.

2-68 (c-2) The loss or destruction of or failure to make a video
 2-69 recording of a plea entered under this article is not alone

3-1 sufficient grounds for a defendant to withdraw the defendant's plea
3-2 or to request the court to set aside a conviction or sentence based
3-3 on the plea.

3-4 SECTION 6. Article 38.073, Code of Criminal Procedure, is
3-5 amended to read as follows:

3-6 Art. 38.073. TESTIMONY OF INMATE WITNESSES. In a
3-7 proceeding in the prosecution of a criminal offense in which an
3-8 inmate in the custody of the Texas Department of Criminal Justice is
3-9 required to testify as a witness, any deposition or testimony of the
3-10 inmate witness may be conducted by a video teleconferencing system
3-11 in the manner described by Article 27.18 [~~electronic means, in the~~
3-12 ~~same manner as permitted in civil cases under Section 30.012, Civil~~
3-13 ~~Practice and Remedies Code~~].

3-14 SECTION 7. Articles 20.011(a) and 20.02(b), Code of
3-15 Criminal Procedure, as amended by this Act, and Article 20.151,
3-16 Code of Criminal Procedure, as added by this Act, apply only to
3-17 testimony before a grand jury that is impaneled on or after the
3-18 effective date of this Act.

3-19 SECTION 8. Article 27.18, Code of Criminal Procedure, as
3-20 amended by this Act, applies to a plea of guilty or nolo contendere
3-21 entered on or after the effective date of this Act, regardless of
3-22 whether the offense with reference to which the plea is entered is
3-23 committed before, on, or after that date.

3-24 SECTION 9. Article 38.073, Code of Criminal Procedure, as
3-25 amended by this Act, applies only to the testimony of an inmate
3-26 witness that is taken on or after the effective date of this Act.

3-27 SECTION 10. This Act takes effect September 1, 2011.

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