

BILL ANALYSIS

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S.B. 1728
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Family Code currently provides that in cases in which the accused juvenile at least 14 years old, juvenile court hearings shall be open to the public unless the court determines there is good cause shown to close the proceedings. A Texas appellate court held in *In re Fort Worth Star-Telegram* (2014) that a juvenile court judge incorrectly closed the courtroom because there was no evidence of good cause shown on the record. However, the appellate court declined to define "good cause shown," or set forth the procedures a juvenile court judge must follow when considering closure of a hearing.

This bill sets forth a procedure a juvenile court judge must follow in order to close the proceedings of a juvenile case. The bill provides that a juvenile proceeding may be closed to the public only if a motion for closure is filed by a party to the proceedings at least three days before the hearing for which closure is sought; and that, based upon evidence presented, there is a reasonable and substantial basis to believe that allowing public access to the proceedings could harm the child, endanger the child's right to a fair trial, or endanger a victim of the conduct of the child. The juvenile court judge must also determine that the potential for harm to the child or to a victim outweighs the benefits of public access to the proceeding, and that the harm can be remedied only by excluding the public from the proceedings. The bill also provides a procedure for appellate review of an order excluding the public from a proceeding.

As proposed, S.B. 1728 amends current law relating to public access to juvenile court proceedings.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 54.08, Family Code, as follows:

Sec. 54.08. New heading: PUBLIC ACCESS TO COURT PROCEEDINGS. (a) Requires the court, except as provided by this section, to open proceedings, rather than hearings, under this title (Juvenile Justice Code) to the public unless the court, on the motion of any party to a proceeding and based on the evidence presented, rather than for good cause shown, determines that:

- (1) there exists a reasonable and substantial basis for believing that public access to the proceeding could harm the child, endanger the child's right to a fair trial, or endanger a victim of the conduct of the child;
- (2) the potential for harm to the child or a victim outweighs the benefits of public access to the proceeding; and
- (3) the harm can be remedied only by excluding the public from proceeding, rather than determines that the public should be excluded.

(b) Requires a motion by a party to exclude the public from a proceeding to be made in writing and served on all parties not later than the third day before the date the proceeding is scheduled to occur.

(c) Requires the court, on receipt of a motion to exclude the public from a proceeding, to conduct an evidentiary hearing in open court on the motion to determine whether exclusion of the public from the proceeding is warranted under Subsection (a). Provides that general considerations, including concern for rehabilitation of the child, are insufficient to warrant exclusion of the public from a proceeding.

(d) Requires the court, on conclusion of the evidentiary hearing under Subsection (c), to order the proceeding to be open to the public unless the court issues written findings of fact and conclusions of law stating that the evidence of potential harm to the child or to a victim presented under Subsection (a) clearly outweighs the public interest in a proceeding that is open to the public.

(e) Provides that any party or member of the public has standing to appeal an order of the court excluding the public from a proceeding.

(f) Provides that any party or member of the public objecting to an order excluding the public from a proceeding is entitled to an immediate appeal of that order. Requires the notice of appeal to be filed not later than the seventh day after the date the order is entered or the date the public is excluded from a proceeding. Requires the filing of a notice of appeal to stay further proceedings pending the disposition of the interlocutory appeal.

(g) Requires the court of appeals to expeditiously review an appeal under this section.

(h) Redesignates existing Subsection (b) as Subsection (h). Makes conforming changes.

(i) Redesignates existing Subsection (c) as Subsection (i). Provides that if a child is under the age of 14 at the time of the proceeding, Subsections (a) to (g) do not apply to a proceeding and the court is required to close the proceeding to the public unless the court makes certain findings. Makes conforming and nonsubstantive changes.

(j) Redesignates existing Subsection (d) as Subsection (j) and makes no further changes to this subsection.

SECTION 2. Effective date: September 1, 2017.