

BILL ANALYSIS

C.S.H.B. 3611
By: Leach
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Remote court proceedings have been shown to save time and money, sparing lawyers, parties, and witnesses from having to go to the courthouse for every hearing. Courts have seen participation rates in remote proceedings in high-volume dockets like child custody and traffic cases improve from 80 percent no-shows to 80 percent appearances. While remote proceedings will never fully replace in-person proceedings, the progress made during the COVID-19 pandemic with respect to accessibility and efficiency should continue long after the pandemic ends. C.S.H.B. 3611 provides for courts to conduct proceedings remotely and for certain objections to and exemptions from remote proceedings.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 3611 amends the Government Code to authorize a court in Texas, except as limited by the U.S. Constitution, the Texas Constitution, Texas Supreme Court rules, or the bill's provisions, as the court determines appropriate on the court's own motion or on the motion of any party, to do the following:

- conduct a hearing or other proceeding as a remote proceeding; and
- allow or require a judge, party, attorney, witness, court reporter, juror, or any other individual to participate in a remote proceeding, including a deposition, hearing, trial, or other proceeding.

The bill defines a "remote proceeding" as a proceeding before a court in which one or more of the participants, including a judge, party, attorney, witness, court reporter, juror, or other individual, attends the proceeding remotely through the use of technology and the Internet.

C.S.H.B. 3611 requires a court that elects to conduct a remote proceeding to do the following:

- provide adequate notice of the remote proceeding to the parties;
- allow a party to file with the court a motion objecting to the remote proceeding and requesting an in-person proceeding not later than the 10th day after the date the party receives the notice; and
- provide a method for an applicable person to notify the court that the person is unable to participate in the remote proceeding because the person is a person with a disability, lacks the required technology, or shows other good cause and:

- provide an alternate method for the person to participate that accommodates the disability, lack of technology, or other situation;
- allow the person to appear in person; or
- conduct the proceeding as an in-person proceeding.

On the court's receipt from any party of a motion objecting to a remote proceeding and requesting an in-person proceeding, the court must consider the motion and grant the motion for good cause shown.

C.S.H.B. 3611 requires the prosecutor and defendant in any contested adversarial or contested evidentiary criminal proceeding for an offense punishable by confinement to each agree for the proceeding to be conducted as a remote proceeding and prohibits the proceeding from being held remotely if the prosecutor or defendant does not agree.

C.S.H.B. 3611 prohibits a district court, statutory county court, statutory probate court, or county court from conducting a jury trial as a remote proceeding unless each party to the proceeding agrees to conduct the proceeding as a remote proceeding. The bill requires the court to do the following for a jury trial that is to be conducted as a remote proceeding in a justice or municipal court:

- consider on the record any motion or objection related to proceeding with the trial not later than the seventh day before the trial date; and
- consider on the record, as soon as practicable, any motion or objection related to proceeding with the trial that is made later than the seventh day before the trial date.

The bill requires a court that conducts a jury trial as a remote proceeding to ensure all prospective jurors have access to the technology necessary to participate in the remote proceeding.

C.S.H.B. 3611 requires a court that conducts a remote proceeding at a location other than the location the court regularly conducts proceedings to provide to the public reasonable notice of the location of the remote proceeding and an opportunity to observe the proceeding. The bill requires the Office of Court Administration of the Texas Judicial System (OCA) to provide guidance and assistance to the extent possible to a court conducting a remote proceeding. The bill establishes that, for purposes of any law requiring notice or citation of the time and place for a proceeding, notice of the remote means by which the proceeding will be conducted and the method for accessing the proceeding through that remote means constitutes notice of the place for the proceeding.

C.S.H.B. 3611 requires the Texas Supreme Court to adopt the rules necessary to implement the changes in law made by the bill and to consult with interested parties, including prosecutors, criminal defense attorneys, judges, and representatives from the State Bar of Texas and Disability Rights Texas before adopting the rules.

C.S.H.B. 3611 requires the Texas Legislative Council, with the assistance of OCA, to prepare for consideration by the 88th Legislature a nonsubstantive revision of state statutes as necessary to reflect the changes in law made by the bill.

C.S.H.B. 3611 repeals the following provisions:

- Section 30.012(b), Civil Practice and Remedies Code; and
- Section 54.012(b), Family Code.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3611 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a specification that appeared in the original that a court's authority to conduct a remote proceeding is without the consent of the parties unless the U.S. Constitution or Texas Constitution requires consent, but the substitute limits a court's authority to do so or allow or require any individual to participate in a remote proceeding as provided by the constitutions, Texas Supreme Court rules, or the bill's provisions and specifies that this authorization is as the court determines appropriate.

The substitute includes requirements that did not appear in the original for a court that elects to conduct a remote proceeding regarding notifying parties, allowing a party to file a motion objecting to the remote proceeding and requesting an in-person proceeding, considering and granting the motion, and the court's duties when a person is unable to participate in the remote proceeding for specified reasons.

The substitute changes the criminal proceedings to which the bill's requirement that the prosecutor and defendant agree for the proceeding to be conducted remotely applies from a criminal proceeding that under the U.S. Constitution or Texas Constitution requires the consent of the parties for the proceeding to be conducted as a remote proceeding, as in the original, to a contested adversarial or contested evidentiary criminal proceeding for an offense punishable by confinement.

The substitute includes provisions that did not appear in the original prohibiting certain courts from conducting a jury trial as a remote proceeding unless each party to the proceeding agrees to conduct the proceeding as a remote proceeding. The substitute limits the application of the original's requirement for a court to consider any motion or objection in a jury trial that is conducted remotely by a specified deadline to a jury trial that is conducted remotely in a justice or municipal court.

The substitute includes a specification that the public notice for a remote proceeding conducted at a location other than the location the court regularly conducts proceedings includes the location of the remote proceeding, which was not in the original.

The substitute includes the following, which did not appear in the original:

- a requirement for the Texas Legislative Council, with the assistance of OCA, to prepare a nonsubstantive revision of state statutes as necessary to reflect the bill's changes; and
- a requirement for the Texas Supreme Court to adopt the rules necessary to implement the bill's provisions and to consult with interested parties before doing so.