

By: Wise

H.B. No. 83

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the manner in which the videotaping of or the  
3 broadcasting by closed circuit television of the testimony of a  
4 child who is the victim of or witness to an alleged offense is  
5 conducted.

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

7 SECTION 1. Section 1, Article 38.071, Code of Criminal  
8 Procedure, is amended to read as follows:

9 Sec. 1. This article applies only to a hearing or proceeding  
10 in the prosecution of an offense defined by any of the following  
11 sections of the Penal Code if the offense is alleged to have been  
12 committed against a child 14 [~~12~~] years of age or younger and if the  
13 [~~trial~~] court finds that the child is unavailable to testify in the  
14 presence of the defendant [~~at the trial of the offense, and applies~~  
15 ~~only to the statements or testimony of that child~~]:

16 (1) Section 21.11 (Indecency with a Child);

17 (2) Section 22.011 (Sexual Assault);

18 (3) Section 22.02 (Aggravated Assault);

19 (4) Section 22.021 (Aggravated Sexual Assault);

20 (5) Section 22.04(e) (Injury to a Child, Elderly  
21 Individual, or Disabled Individual);

22 (6) Section 22.04(f) (Injury to a Child, Elderly  
23 Individual, or Disabled Individual), if the conduct is committed  
24 intentionally or knowingly;

1 (7) Section 25.02 (Prohibited Sexual Conduct); or

2 (8) Section 43.25 (Sexual Performance by a Child).

3 SECTION 2. Section 2(c), Article 38.071, Code of Criminal  
4 Procedure, is amended to read as follows:

5 (c) A recording made under Subsection (a) of this section is  
6 not admissible into evidence unless a recording made under  
7 Subsection (b) is admitted at the same time if a recording under  
8 Subsection (b) was requested prior to the time of the hearing or  
9 proceeding [~~trial~~].

10 SECTION 3. Section 3(a), Article 38.071, Code of Criminal  
11 Procedure, is amended to read as follows:

12 (a) On its own motion or on the motion of the attorney  
13 representing the state or the attorney representing the defendant,  
14 the court may order that the testimony of the child be taken [~~during~~  
15 ~~the trial~~] in a room other than the courtroom and be televised by  
16 closed circuit equipment in the courtroom to be viewed by the court  
17 and the finder of fact. To the extent practicable, only the judge,  
18 the court reporter, the attorneys for the defendant and for the  
19 state, persons necessary to operate the equipment, and any person  
20 whose presence would contribute to the welfare and well-being of  
21 the child may be present in the room with the child during his  
22 testimony. Only the attorneys and the judge may question the child.  
23 To the extent practicable, the persons necessary to operate the  
24 equipment shall be confined to an adjacent room or behind a screen  
25 or mirror that permits them to see and hear the child during his  
26 testimony, but does not permit the child to see or hear them. The  
27 court shall permit the defendant to observe and hear the testimony

1 of the child and to communicate contemporaneously with his attorney  
2 during periods of recess or by audio contact, but the court shall  
3 attempt to ensure that the child cannot hear or see the defendant.  
4 The court shall permit the attorney for the defendant adequate  
5 opportunity to confer with the defendant during cross-examination  
6 of the child. On application of the attorney for the defendant, the  
7 court may recess the proceeding before or during cross-examination  
8 of the child for a reasonable time to allow the attorney for the  
9 defendant to confer with the defendant.

10 SECTION 4. Section 4(b), Article 38.071, Code of Criminal  
11 Procedure, is amended to read as follows:

12 (b) The court may set any other conditions and limitations  
13 on the taking of the testimony that it finds just and appropriate,  
14 taking into consideration the interests of the child, the rights of  
15 the defendant, and any other relevant factors. The court shall also  
16 ensure that:

17 (1) the recording is both visual and aural and is  
18 recorded on film or videotape or by other electronic means;

19 (2) the recording equipment was capable of making an  
20 accurate recording, the operator was competent, the quality of the  
21 recording is sufficient to allow the court and the finder of fact to  
22 assess the demeanor of the child and the interviewer, and the  
23 recording is accurate and is not altered;

24 (3) each voice on the recording is identified;

25 (4) the defendant, the attorneys for each party, and  
26 the expert witnesses for each party are afforded an opportunity to  
27 view the recording before it is shown in the courtroom;

1           (5) before giving his testimony, the child was placed  
2 under oath or was otherwise admonished in a manner appropriate to  
3 the child's age and maturity to testify truthfully;

4           (6) the court finds from the recording or through an in  
5 camera examination of the child that the child was competent to  
6 testify at the time the recording was made; and

7           (7) only one continuous recording of the child was  
8 made or the necessity for pauses in the recordings or for multiple  
9 recordings is established at the hearing or proceeding [~~trial~~].

10           SECTION 5. Sections 5(a) and (b), Article 38.071, Code of  
11 Criminal Procedure, are amended to read as follows:

12           (a) On the motion of the attorney representing the state or  
13 the attorney representing the defendant and on a finding by the  
14 [~~trial~~] court that the following requirements have been  
15 substantially satisfied, the recording of an oral statement of the  
16 child made before a complaint has been filed or an indictment  
17 returned charging any person with an offense to which this article  
18 applies is admissible into evidence if:

19           (1) no attorney or peace officer was present when the  
20 statement was made;

21           (2) the recording is both visual and aural and is  
22 recorded on film or videotape or by other electronic means;

23           (3) the recording equipment was capable of making an  
24 accurate recording, the operator of the equipment was competent,  
25 the quality of the recording is sufficient to allow the court and  
26 the finder of fact to assess the demeanor of the child and the  
27 interviewer, and the recording is accurate and has not been

1 altered;

2 (4) the statement was not made in response to  
3 questioning calculated to lead the child to make a particular  
4 statement;

5 (5) every voice on the recording is identified;

6 (6) the person conducting the interview of the child  
7 in the recording is expert in the handling, treatment, and  
8 investigation of child abuse cases, present at the hearing or  
9 proceeding, called by the state [~~as part of the state's case in~~  
10 ~~chief to testify at trial~~], and subject to cross-examination;

11 (7) immediately after a complaint was filed or an  
12 indictment returned charging the defendant with an offense to which  
13 this article applies, the attorney representing the state notified  
14 the court, the defendant, and the attorney representing the  
15 defendant of the existence of the recording [~~and that the recording~~  
16 ~~may be used at the trial of the offense~~];

17 (8) the defendant, the attorney for the defendant, and  
18 the expert witnesses for the defendant were afforded an opportunity  
19 to view the recording before it is offered into evidence and, if a  
20 proceeding was requested as provided by Subsection (b) of this  
21 section, in a proceeding conducted before a district court judge  
22 but outside the presence of the jury were afforded an opportunity to  
23 cross-examine the child as provided by Subsection (b) of this  
24 section from any time immediately following the filing of the  
25 complaint or the returning of an indictment charging the defendant  
26 with an offense to which this article applies until the date the  
27 hearing or proceeding [~~trial~~] begins;

1           (9) the recording of the cross-examination, if there  
2 is one, is admissible under Subsection (b) of this section;

3           (10) before giving his testimony, the child was placed  
4 under oath or was otherwise admonished in a manner appropriate to  
5 the child's age and maturity to testify truthfully;

6           (11) the court finds from the recording or through an  
7 in camera examination of the child that the child was competent to  
8 testify at the time that the recording was made; and

9           (12) only one continuous recording of the child was  
10 made or the necessity for pauses in the recordings or for multiple  
11 recordings has been established at the hearing or proceeding  
12 [~~trial~~].

13           (b) On the motion of the attorney representing the  
14 defendant, a district court may order that the cross-examination of  
15 the child be taken and be recorded before the judge of that court at  
16 any time until a recording made in accordance with Subsection (a) of  
17 this section has been introduced into evidence at the hearing or  
18 proceeding [~~trial~~]. On a finding by the [~~trial~~] court that the  
19 following requirements were satisfied, the recording of the  
20 cross-examination of the child is admissible into evidence and  
21 shall be viewed by the finder of fact only after the finder of fact  
22 has viewed the recording authorized by Subsection (a) of this  
23 section if:

24           (1) the recording is both visual and aural and is  
25 recorded on film or videotape or by other electronic means;

26           (2) the recording equipment was capable of making an  
27 accurate recording, the operator of the equipment was competent,

1 the quality of the recording is sufficient to allow the court and  
2 the finder of fact to assess the demeanor of the child and the  
3 attorney representing the defendant, and the recording is accurate  
4 and has not been altered;

5 (3) every voice on the recording is identified;

6 (4) the defendant, the attorney representing the  
7 defendant, the attorney representing the state, and the expert  
8 witnesses for the defendant and the state were afforded an  
9 opportunity to view the recording before the hearing or proceeding  
10 [~~trial~~] began;

11 (5) the child was placed under oath before the  
12 cross-examination began or was otherwise admonished in a manner  
13 appropriate to the child's age and maturity to testify truthfully;  
14 and

15 (6) only one continuous recording of the child was  
16 made or the necessity for pauses in the recordings or for multiple  
17 recordings was established at the hearing or proceeding [~~trial~~].

18 SECTION 6. Section 8(a), Article 38.071, Code of Criminal  
19 Procedure, is amended to read as follows:

20 (a) In making a determination of unavailability under this  
21 article, the court shall consider relevant factors including the  
22 relationship of the defendant to the child, the character and  
23 duration of the alleged offense, the age, maturity, and emotional  
24 stability of the child, and the time elapsed since the alleged  
25 offense, and whether the child is more likely than not to be  
26 unavailable to testify because:

27 (1) of emotional or physical causes, including the

1 confrontation with the defendant [~~or the ordinary involvement as~~  
2 ~~complainant in the courtroom trial~~]; or

3 (2) the child would suffer undue psychological or  
4 physical harm through his involvement at the hearing or proceeding  
5 [~~trial~~].

6 SECTION 7. Section 9, Article 38.071, Code of Criminal  
7 Procedure, is amended to read as follows:

8 Sec. 9. If the court finds the testimony taken under  
9 Section 2 or 5 of this article is admissible into evidence or if the  
10 court orders the testimony to be taken under Section 3 or 4 of this  
11 article and if the identity of the perpetrator is a contested issue,  
12 the child additionally must make an in-person identification of the  
13 defendant either at or before the hearing or proceeding [~~trial~~].

14 SECTION 8. Section 10, Article 38.071, Code of Criminal  
15 Procedure, is amended to read as follows:

16 Sec. 10. In ordering a child to testify under this article,  
17 the court shall take all reasonable steps necessary and available  
18 to minimize undue psychological trauma to the child and to minimize  
19 the emotional and physical stress to the child caused by relevant  
20 factors, including the confrontation with the defendant and the  
21 ordinary participation of the witness [~~complainant~~] in the  
22 courtroom.

23 SECTION 9. This Act takes effect September 1, 2003.