

By: Brown of Kaufman

H.B. No. 2076

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the impact of the presence of certain peace officers on  
3 the admissibility of certain statements made by children.

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

5 SECTION 1. Section 5(a), Article 38.071, Code of Criminal  
6 Procedure, is amended to read as follows:

7 (a) On the motion of the attorney representing the state or  
8 the attorney representing the defendant and on a finding by the  
9 court that the following requirements have been substantially  
10 satisfied, the recording of an oral statement of the child made  
11 before a complaint has been filed or an indictment returned is  
12 admissible into evidence if:

13 (1) no attorney or active, appointed peace officer was  
14 present when the statement was made;

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

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

23 (4) the statement was not made in response to  
24 questioning calculated to lead the child to make a particular

1 statement;

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

3 (6) the person conducting the interview of the child  
4 in the recording is expert in the handling, treatment, and  
5 investigation of child abuse cases, present at the hearing or  
6 proceeding, called by the state, and subject to cross-examination;

7 (7) immediately after a complaint was filed or an  
8 indictment returned, the attorney representing the state notified  
9 the court, the defendant, and the attorney representing the  
10 defendant of the existence of the recording;

11 (8) the defendant, the attorney for the defendant, and  
12 the expert witnesses for the defendant were afforded an opportunity  
13 to view the recording before it is offered into evidence and, if a  
14 proceeding was requested as provided by Subsection (b) [~~of this~~  
15 ~~section~~], in a proceeding conducted before a district court judge  
16 but outside the presence of the jury were afforded an opportunity to  
17 cross-examine the child as provided by Subsection (b) [~~of this~~  
18 ~~section~~] from any time immediately following the filing of the  
19 complaint or the returning of an indictment charging the defendant  
20 until the date the hearing or proceeding begins;

21 (9) the recording of the cross-examination, if there  
22 is one, is admissible under Subsection (b) [~~of this section~~];

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

26 (11) the court finds from the recording or through an  
27 in camera examination of the child that the child was competent to

1 testify at the time that the recording was made; and

2           (12) only one continuous recording of the child was  
3 made or the necessity for pauses in the recordings or for multiple  
4 recordings has been established at the hearing or proceeding.

5           SECTION 2. This Act applies only to the admissibility of a  
6 recorded oral statement at a hearing or proceeding that commences  
7 on or after the effective date of this Act, regardless of whether  
8 the statement was made before, on, or after that date.

9           SECTION 3. This Act takes effect September 1, 2009.