

BILL ANALYSIS

S.B. 578
By: Fraser
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Testifying in court is often stressful for children. Numerous studies document that children have very little, if any, understanding of legal processes. The confusing, often intimidating environment of a courtroom is exacerbated when judges and attorneys ask questions the child cannot understand. S.B. 578 protects children under 17 years of age from confusing, often intimidating, practices while testifying and facilitates testimony that is fair and accurate. Currently, Section 202, Family Code, provides for a "friend of the court" for child support and access to a child only.

S.B. 578 amends the Code of Criminal Procedure to enhance a child's rights during testimony in criminal cases. It requires the court to:

- administer an oath to a child in a manner that allows the child to fully understand the child's duty to tell the truth;
- ensure that questions asked of the child are stated in language appropriate to the child's age;
- explain to the child that the child has the right to have the court notified if the child is unable to understand any question and to have a question restated in a form that the child does understand;
- ensure that a child testifies only at a time of day when the child is best able to understand the questions and to undergo the proceedings without being traumatized; and
- prevent intimidation or harassment of the child by any party and, for that purpose, rephrase as appropriate any question asked of the child.

It also allows motions for the child to have a blanket, toy, or similar comfort item while testifying, or a support person in close proximity. The court shall grant such a motion if the court finds by a preponderance of the evidence that both the child cannot reasonably testify without the possession of the comfort item or the presence of the support person, and granting the motion is not likely to prejudice the trier of fact in evaluating the child's testimony.

As proposed, S.B. 578 amends current law relating to the testimony of children in criminal cases.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.074, as follows:

Art. 38.074. TESTIMONY OF CHILD IN PROSECUTION OF OFFENSE

Sec. 1. Defines "child" and "support person" in this article.

Sec. 2. Provides that this article applies to the testimony of a child in any hearing or proceeding in the prosecution of any offense.

Sec. 3. (a) Requires a court to:

(1) administer an oath to a child in a manner that allows the child to fully understand the child's duty to tell the truth;

(2) ensure that questions asked of the child are stated in language appropriate to the child's age;

(3) explain to the child that the child has the right to have the court notified if the child is unable to understand any question and to have a question restated in a form that the child does understand;

(4) ensure that a child testifies only at a time of day when the child is best able to understand the questions and to undergo the proceedings without being traumatized, including:

(A) limiting the duration of the child's testimony;

(B) limiting the timing of the child's testimony to the child's normal school hours; or

(C) ordering a recess during the child's testimony when necessary for the energy, comfort, or attention span of the child; and

(5) prevent intimidation or harassment of the child by any party and, for that purpose, rephrase as appropriate any question asked of the child.

(b) Requires the court, on the motion of any party, or a parent, managing conservator, guardian, or guardian ad litem of a child or special advocate for a child, to allow the child to have a toy, blanket, or similar comforting item in the child's possession while testifying or allow a support person to be present in close proximity to the child during the child's testimony if the court finds by a preponderance of the evidence that:

(1) the child cannot reliably testify without the possession of the item or presence of the support person, as applicable; and

(2) granting the motion is not likely to prejudice the trier of fact in evaluating the child's testimony.

(c) Prohibits a support person who is present during a child's testimony from:

(1) obscuring the child from the view of the defendant or the trier of fact;

(2) providing the child with an answer to any question asked of the child; or

(3) assisting or influencing the testimony of the child.

(d) Authorizes the court to set any other conditions and limitations on the taking of the testimony of a child that it finds just and appropriate, considering the interests of the child, the rights of the defendant, and any other relevant factors.

SECTION 2. Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2011.