

By: Fraser S.B. No. 578
(Hartnett, Gallego, Christian, Rodriguez, Carter, et al.)

A BILL TO BE ENTITLED

AN ACT

relating to the testimony of children in criminal cases.

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

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.074 to read as follows:

Art. 38.074. TESTIMONY OF CHILD IN PROSECUTION OF OFFENSE

Sec. 1. In this article:

(1) "Child" has the meaning assigned by Section 22.011(c), Penal Code.

(2) "Support person" means any person whose presence would contribute to the welfare and well-being of a child.

Sec. 2. This article applies to the testimony of a child in any hearing or proceeding in the prosecution of any offense, other than the testimony of a child in a hearing or proceeding in a criminal case in which that child is the defendant.

Sec. 3. (a) A court shall:

(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

1 does understand;

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

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

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

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

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

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

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

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

27 (c) A support person who is present during a child's

1 testimony may not:

2 (1) obscure the child from the view of the defendant or
3 the trier of fact;

4 (2) provide the child with an answer to any question
5 asked of the child; or

6 (3) assist or influence the testimony of the child.

7 (d) The court may set any other conditions and limitations
8 on the taking of the testimony of a child that it finds just and
9 appropriate, considering the interests of the child, the rights of
10 the defendant, and any other relevant factors.

11 SECTION 2. The change in law made by this Act applies to a
12 criminal proceeding that commences on or after the effective date
13 of this Act. A criminal proceeding that commences before the
14 effective date of this Act is covered by the law in effect when the
15 proceeding commenced, and the former law is continued in effect for
16 that purpose.

17 SECTION 3. This Act takes effect September 1, 2011.