

1-1 By: Fraser S.B. No. 578
1-2 (In the Senate - Filed February 9, 2011; February 17, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 May 9, 2011, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; May 9, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the testimony of children in criminal cases.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Chapter 38, Code of Criminal Procedure, is
1-11 amended by adding Article 38.074 to read as follows:

1-12 Art. 38.074. TESTIMONY OF CHILD IN PROSECUTION OF OFFENSE

1-13 Sec. 1. In this article:

1-14 (1) "Child" has the meaning assigned by Section
1-15 22.011(c), Penal Code.

1-16 (2) "Support person" means any person whose presence
1-17 would contribute to the welfare and well-being of a child.

1-18 Sec. 2. This article applies to the testimony of a child in
1-19 any hearing or proceeding in the prosecution of any offense.

1-20 Sec. 3. (a) A court shall:

1-21 (1) administer an oath to a child in a manner that
1-22 allows the child to fully understand the child's duty to tell the
1-23 truth;

1-24 (2) ensure that questions asked of the child are
1-25 stated in language appropriate to the child's age;

1-26 (3) explain to the child that the child has the right
1-27 to have the court notified if the child is unable to understand any
1-28 question and to have a question restated in a form that the child
1-29 does understand;

1-30 (4) ensure that a child testifies only at a time of day
1-31 when the child is best able to understand the questions and to
1-32 undergo the proceedings without being traumatized, including:

1-33 (A) limiting the duration of the child's
1-34 testimony;

1-35 (B) limiting the timing of the child's testimony
1-36 to the child's normal school hours; or

1-37 (C) ordering a recess during the child's
1-38 testimony when necessary for the energy, comfort, or attention span
1-39 of the child; and

1-40 (5) prevent intimidation or harassment of the child by
1-41 any party and, for that purpose, rephrase as appropriate any
1-42 question asked of the child.

1-43 (b) On the motion of any party, or a parent, managing
1-44 conservator, guardian, or guardian ad litem of a child or special
1-45 advocate for a child, the court shall allow the child to have a toy,
1-46 blanket, or similar comforting item in the child's possession while
1-47 testifying or allow a support person to be present in close
1-48 proximity to the child during the child's testimony if the court
1-49 finds by a preponderance of the evidence that:

1-50 (1) the child cannot reliably testify without the
1-51 possession of the item or presence of the support person, as
1-52 applicable; and

1-53 (2) granting the motion is not likely to prejudice the
1-54 trier of fact in evaluating the child's testimony.

1-55 (c) A support person who is present during a child's
1-56 testimony may not:

1-57 (1) obscure the child from the view of the defendant or
1-58 the trier of fact;

1-59 (2) provide the child with an answer to any question
1-60 asked of the child; or

1-61 (3) assist or influence the testimony of the child.

1-62 (d) The court may set any other conditions and limitations
1-63 on the taking of the testimony of a child that it finds just and
1-64 appropriate, considering the interests of the child, the rights of

2-1 the defendant, and any other relevant factors.

2-2 SECTION 2. The change in law made by this Act applies to a
2-3 criminal proceeding that commences on or after the effective date
2-4 of this Act. A criminal proceeding that commences before the
2-5 effective date of this Act is covered by the law in effect when the
2-6 proceeding commenced, and the former law is continued in effect for
2-7 that purpose.

2-8 SECTION 3. This Act takes effect September 1, 2011.

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