

By: Hefner

H.B. No. 3956

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the testimony of a person with a disability in certain  
3 criminal cases.

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

5 SECTION 1. Chapter 38, Code of Criminal Procedure, is  
6 amended by adding Article 38.076 to read as follows:

7 Art. 38.076. TESTIMONY OF PERSON WITH DISABILITY. (a) In  
8 this article:

9 (1) "Person with a disability" has the meaning  
10 assigned by Section 3, Article 38.072.

11 (2) "Support person" has the meaning assigned by  
12 Section 1, Article 38.074.

13 (b) This article applies to the testimony of a person with a  
14 disability in any hearing or proceeding in the prosecution of an  
15 offense under any of the following provisions of the Penal Code,  
16 other than a prosecution in which the person is the defendant:

17 (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive  
18 Offenses);

19 (2) Section 25.02 (Prohibited Sexual Conduct);

20 (3) Section 43.25 (Sexual Performance by a Child);

21 (4) Section 43.05(a) (Compelling Prostitution);

22 (5) Section 20A.02(a)(3), (4), (7), or (8)  
23 (Trafficking of Persons); or

24 (6) Section 15.01 (Criminal Attempt), if the offense

1 attempted is described by Subdivision (1), (2), (3), (4), or (5).

2 (c) On the motion of any party, or a parent, managing  
3 conservator, guardian, or guardian ad litem of a person with a  
4 disability, the court shall allow the person to have a toy, blanket,  
5 or similar comforting item in the person's possession while  
6 testifying or allow a support person to be present in close  
7 proximity to the person with a disability during that person's  
8 testimony if the court finds by a preponderance of the evidence  
9 that:

10 (1) the person with a disability cannot reliably  
11 testify without the possession of the item or presence of the  
12 support person, as applicable; and

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

15 (d) A support person who is present during the testimony of  
16 a person with a disability may not:

17 (1) obscure the person with a disability from the view  
18 of the defendant or the trier of fact;

19 (2) provide the person with a disability with an  
20 answer to any question asked of the person; or

21 (3) assist or influence the testimony of the person  
22 with a disability.

23 (e) The court may set any other conditions and limitations  
24 on the taking of the testimony of a person with a disability that it  
25 finds just and appropriate, considering the interests of the  
26 person, the rights of the defendant, and any other relevant  
27 factors.

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

7           SECTION 3. This Act takes effect September 1, 2019.