

CHAPTER 688

S.B. No. 1084

AN ACT

relating to the testimony of a child in certain administrative proceedings and to the recording of certain statements or testimony.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), is amended by adding Section 13B to read as follows:

Sec. 13B. STATEMENT OR TESTIMONY OF CHILD. (a) This section applies to a contested case in which an issue is the abuse of a child under 12 years of age. This section applies only to the statement or testimony of a child under 12 years of age who is alleged to have been abused.

(b) The recording of an oral statement that is made by a child to whom this section applies and that is recorded prior to the proceeding is admissible into evidence if:

(1) no attorney for a party to the proceeding was present when the statement was made;

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

(3) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

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

(5) each voice on the recording is identified;

(6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and

(7) each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence.

(c) On the motion of a party to the proceeding, the person conducting the hearing may order that the testimony of the child be taken in a room other than the hearing room and be televised by closed circuit equipment in the hearing room to be viewed by the finder of fact and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during the child's testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony, but does not permit the child to see or hear them.

(d) On the motion of a party to the proceeding, the person conducting the hearing may order that the testimony of the child be taken outside the hearing room and be recorded for showing in the hearing room before the person conducting the hearing, the finder of fact, and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under Subsection (c) of this section may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Subsection (c). The person conducting the hearing shall ensure that:

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

(2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) each voice on the recording is identified; and

(4) each party to the proceeding is afforded an opportunity to view the recording before it is shown in the hearing room.

(e) If the testimony of a child is taken as provided by this section, the child may not be compelled to testify before the person conducting the hearing during the proceeding.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 12, 1987, by the following vote: Yeas 30, Nays 0. Passed the House on May 22, 1987, by the following vote: Yeas 148, Nays 0, one present not voting.

Approved June 18, 1987.

Effective June 18, 1987.