



# CHILD-FRIENDLY COURTROOMS: ITEMS FOR JUDICIAL CONSIDERATION

## 1 SUPPORT PERSON DURING TESTIMONY

Article 38.074 of the Texas Code of Criminal Procedure authorizes the presence of support persons in criminal cases. Courts throughout Texas have made efforts to reduce potential trauma to child witnesses by allowing the presence of a support person. Appellate courts have permitted the presence of a Youth Victim Volunteer next to the child during victim testimony and the presence of a guardian ad litem 15-20 feet behind the witness chair.

administer an oath to a child in a manner that allows the child to fully understand the child's duty to tell the truth.

Article 38.074 of the Texas Code of Criminal Procedure requires that questions be posed in a manner appropriate to the child's age to prevent intimidation or harassment. It also requires that a child understand his right to notify the court if the child is unable to understand any question, and to have the question restated in a form that the child does understand.

## 2 COMFORT ITEM DURING TESTIMONY

Article 38.074 of the Texas Code of Criminal Procedure authorizes the use of a comfort item in criminal cases. This practice has been successfully implemented in courts throughout Texas. In *Sperling v. Texas*, the Seventh Court of Appeals of Texas allowed a child victim to hold a teddy bear while testifying, as one of the "reasonable steps authorized by the Code of Criminal Procedure in an effort to minimize the psychological, emotional and physical trauma of the child-victim caused by her participation in the prosecution, including her face-to-face confrontation with appellant."

The use of simple grammar, in conjunction with concrete words, will result in the child better understanding the attorney's questions and increase the likelihood of active participation in the judicial process.

## 5 TESTIMONIAL AIDS

Anatomically correct dolls have been used in Texas courts to facilitate child victims' explanation of their abuse. For example, in *Texas v. Jensen*, the Galveston County trial court permitted a three-year-old sexual abuse victim to use a doll to show where the defendant had touched her.

The Fourteenth Court of Appeals of Texas commented on the advantages of using anatomical dolls, noting "the use of anatomically correct dolls is beneficial when a child is testifying to clarify the witness' explanations and to assure a common understanding between a witness and a jury."

## 3 PRIORITIZING DOCKETS

Articles 56.02 and 29.14 of the Texas Code of Criminal Procedure establish that, where a continuance has been requested by the defendant, the victim has the right to ask the court to consider the impact on a victim who is younger than seventeen years of age or whose case involves family violence.

## 6 CONSIDER TAKING AGE-APPROPRIATE BREAKS

Scheduling testimony in accordance with the child's schedule is required by Article 38.074 of the Texas Code of Criminal Procedure. The code

## 4 USE OF CHILD-FRIENDLY LANGUAGE

Article 38.074 of the Texas Code of Criminal Procedure provides that a court shall

provides that a court shall “ensure that a child testifies only at a time of day when the child is best able to understand the questions and to limit potential trauma, 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”

## 7 CONSIDER CLOSING THE COURTROOM

The United States Supreme Court, in *Globe Newspaper Co. v. Superior Court*, upheld closing the courtroom to spectators during a child’s testimony. The evaluation must be made on a case-by-case basis on a showing that the individual child will be traumatized by the presence of the audience. The Thirteenth Court of Appeals of Texas adopted this reasoning in *Mosby v. Texas*, finding that the youthful age of the witness and extremely sensitive nature of testimony which related to specific sexual acts between the witness and defendant justified exclusion of the public from the courtroom so as to protect the witness from harassment or undue embarrassment.

## 8 CONSIDER LEADING QUESTIONS

TEXAS R. EVID. 611(c) states that leading questions may be used on the direct examination of a witness when it is necessary to develop the testimony of the witness. The legislative notes to the Rule further clarify that leading questions may, in the court’s discretion, be used on direct examination for: (1) preliminary matters; (2) refreshing memory; and (3) questioning ignorant or illiterate persons or children. The use of leading questions in direct examination is left to the sound discretion of the trial judge. In *Flannery v. Texas*, involving the competency of a nine-year-old witness in a rape case, the court noted that even though a certain question

was admittedly leading, “[T]he rigor of the rule forbidding the asking of such questions bears some flexibility when dealing with a witness of tender years.”

## 9 CONSIDER REDUCING FORMAL ATTIRE

Altering a judge’s formal attire may decrease a child witness’ anxiety in a courtroom setting. Research published by the National Institute of Justice notes the potentially intimidating factor of the judge’s presence, explaining, “...some children may feel protected by the presence of the judge, but others may be intimidated by the big stranger in the dark, scary robe who yells at people in the courtroom and sits towering above the witness stand. One therapist tells of a child witness who was afraid that the judge would hit her with a gavel, which she referred to as a hammer. Children perceive the judge’s power to punish and may not understand that they are not the object of that punishment.”

## 10 CONSIDER CLOSED-CIRCUIT TV TESTIMONY

Article 38.071 of the Texas Code of Criminal Procedure allows the court to order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom. *Maryland v. Craig* affirms the use of remote testimony of children in criminal cases if the state makes an adequate showing of necessity. This showing of necessity requires “individualized findings that...particular witnesses needed special protection” rather than a “legislatively imposed presumption of trauma.”

Closed-circuit, remote broadcast testimony is also permitted in civil cases under Section 104.004 of the Texas Family Code. In civil cases, the court may order that the testimony of a child age twelve or under who is alleged to have been abused be taken outside the courtroom and televised by closed-circuit equipment in the courtroom.