

SENATE BILL No. 444

By Committee on Ways and Means

1-25

9 AN ACT establishing the child witness protection act.
10
11 *Be it enacted by the Legislature of the State of Kansas:*
12 Section 1. (a) This section shall be known and may be cited as the
13 child witness protection act.
14 (b) As used in this act:
15 (1) "Child" means a person under the age of 13 years.
16 (2) "Comfort item" means any toy, blanket or similar item in a child's
17 possession.
18 (3) "Support person" means an adult who is known to the child victim
19 or witness and who has no direct legal or pecuniary interest in the out-
20 come of the judicial proceeding.
21 (4) "Victim or witness" shall not mean any child accused of commit-
22 ting an offense which if committed by an adult would constitute the com-
23 mission of a felony, however these terms may, in the court's discretion,
24 include:
25 (A) A child where such child's participation in such felony appears to
26 have been induced, coerced or unwilling; or
27 (B) a child who has participated in such felony, but who has subse-
28 quently and voluntarily agreed to testify on behalf of the state.
29 (c) In order to facilitate testimony that is fair and accurate, for the
30 benefit of all parties, and in order to protect all parties from the risks of
31 a child victim or witness becoming confused while testifying in a judicial
32 proceeding, the following shall apply to a child testifying in court:
33 (1) Whether at a competency hearing or trial itself, the court shall
34 ensure that any oath that is required of a child be administered in such
35 a manner that the child may fully understand the child's duty to tell the
36 truth;
37 (2) the court shall take care to ensure questions are stated in a form
38 which is appropriate to the age of the child and shall explain that if the
39 child does not understand a question, the child has the right to say the
40 child does not understand the question and to have the question restated
41 in a form that the child does understand. Insofar as it is consistent with
42 the constitutional rights of the parties to confront and cross-examine ad-
43 verse witnesses, the court may rephrase any question in order to prevent

1 any intimidation of the child;

2 (3) (A) the court, if requested by the child, the child's attorney or
3 the guardian ad litem for the child, shall:

4 (i) Allow the child to have a comfort item while testifying; and

5 (ii) designate a support person, who shall be present in the court-
6 room, in view of the child. The court may allow such support person to
7 remain in close proximity to the child during the child's testimony.

8 (B) Such item and designation shall be allowed unless the court de-
9 termines that allowing such action would prejudice the adverse party; and

10 (4) notwithstanding K.S.A. 60-104, and amendments thereto, on its
11 own motion or the motion of any party to the judicial proceeding, at least
12 30 days in advance of the proceeding, the court may order such accom-
13 modations as are appropriate under the circumstances to ensure the com-
14 fort of the child, including the following measures:

15 (A) Adjusting the layout of the courtroom;

16 (B) conducting the proceedings outside the normal courtroom; or

17 (C) relaxing the formalities of the proceeding, provided that such
18 measures are consistent with the rights of all parties under the constitu-
19 tion and the laws of the United States and the state of Kansas including,
20 but not limited to, K.S.A. 22-3434, and amendments thereto, and K.S.A.
21 2009 Supp. 38-2249 and 38-2359, and amendments thereto.

22 (d) If a support person is allowed to be present in the courtroom, the
23 support person shall not obscure the child from the view of the defendant
24 or the trier of fact. Such support person shall not provide the child with
25 an answer to any question directed to the child during the course of the
26 child's testimony or otherwise prompt the child or otherwise influence
27 the testimony of the child. If such support person attempts to influence
28 or affect in any manner the testimony of the child during the giving of
29 testimony or at any other time, the court shall exclude such support per-
30 son, refer the matter of misconduct of such support person to the pro-
31 secuting attorney and designate an alternative support person.

32 Sec. 2. This act shall take effect and be in force from and after its
33 publication in the statute book.