

By: Senator(s) Wiggins, Longwitz, Harkins,  
Moran, Parker, Tollison

To: Judiciary, Division A

SENATE BILL NO. 2704

1 AN ACT TO CREATE NEW SECTION 99-43-101, MISSISSIPPI CODE OF  
2 1972, TO ENACT A CHILD WITNESS BILL OF RIGHTS IN ORDER TO GRANT  
3 APPROPRIATE ACCOMMODATIONS TO CHILDREN TESTIFYING IN COURT; AND  
4 FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** The following shall be codified as Section  
7 99-43-101, Mississippi Code of 1972:

8 99-43-101. **Mississippi Child Witness Bill of Rights.** (1)

9 It is the public policy of this state that a child who is the  
10 victim of a crime or who is required to testify in a legal or  
11 criminal proceeding be endowed with certain rights to ensure the  
12 protection of that child, lessen the effect of mental and  
13 emotional suffering upon that child and to ensure an environment  
14 in the legal or criminal proceeding that is conducive to the  
15 search for the truth.

16 (2) The following terms have the meanings ascribed:

17 (a) "Child" means any individual under the age of  
18 eighteen (18) years of age who must testify in any legal or  
19 criminal proceeding.



20 (b) "Legal proceeding" means any hearing, trial or  
21 other proceeding in the courts of the State of Mississippi.

22 (c) "Criminal proceeding" means any legal proceeding  
23 where a child is a victim of a crime which is the subject of a  
24 legal proceeding or where a child is a witness as to a material  
25 issue in the criminal proceeding.

26 (3) In any legal or criminal proceeding under this act, a  
27 child shall have the following rights to be enforced by the court  
28 sua sponte or upon motion or notice of an attorney in the  
29 proceeding:

30 (a) To be asked questions in a manner which a child of  
31 that age can reasonably understand, including, but not limited, to  
32 a child-friendly oath.

33 (b) To be free of nuisance, vexatious or harassment  
34 tactics in the proceeding.

35 (c) To have present in the courtroom and in a position  
36 clearly visible in close proximity to the child, a support person,  
37 if the support person is not a witness in the proceeding.

38 (d) To have the courtroom or the hearing room adjusted  
39 to ensure the comfort and protection of the child.

40 (e) To have the relaxation of the formalities of the  
41 proceedings in an effort to ensure the comfort of the child.

42 (f) To permit a properly trained facility animal or  
43 comfort item or both to be present inside the courtroom or hearing  
44 room.



45 (g) To permit the use of a properly constructed screen  
46 which would permit the judge and jury in the courtroom or hearing  
47 room to see the child but would obscure the child's view of the  
48 defendant or the public or both.

49 (h) To have a secure and child-friendly waiting area  
50 provided for the child during court proceedings and to have a  
51 support person stay with the child while waiting.

52 (i) To have an advocate or support person inform the  
53 court about the child's ability to understand the nature of the  
54 proceedings, special accommodations that may be needed for the  
55 child's testimony, and any other testimony relevant to any of the  
56 rights set forth in this section.

57 (j) To allow the attorney or guardian ad litem to move  
58 for an order authorizing the child's testimony to be taken in a  
59 room outside of the courtroom and be televised by a two-way,  
60 closed-circuit television, as provided in Section 13-1-405 and in  
61 accordance with the rules of evidence.

62 (4) In circumstances where a defendant in a criminal  
63 proceeding has chosen to proceed without counsel, the court may  
64 appoint standby counsel for that party and may order standby  
65 counsel to question a child witness on behalf of the pro se party  
66 if the court finds that there is a substantial likelihood that  
67 emotional harm would come to the child if the pro se party were  
68 allowed to question the child directly.



69           (5) (a) If the child is the victim of a crime and is the  
70 subject of the criminal proceeding, the court shall ensure that  
71 all steps necessary to secure the physical safety of the child,  
72 both in the courtroom and during periods of time that the child  
73 may spend waiting for court, have been taken.

74           (b) The court and all attorneys involved in a criminal  
75 proceeding involving a child shall not disclose to any third party  
76 any discovery, including, but not limited to, the personal  
77 information of the child or child witness including the child's  
78 name, address and date of birth, any and all interviews of the  
79 child or child witness, and any other identifying information of a  
80 child witness or a child victim. Upon written motion by a party,  
81 the court may authorize by written order the production of any  
82 discovery to a third party, if the third party agrees to maintain  
83 the security and nondisclosure of the discovery and return the  
84 discovery to the party upon conclusion of the case. The court  
85 shall enforce any violations of this section through its contempt  
86 powers.

87           (c) In any legal proceeding in which a child witness is  
88 alleged to have been emotionally, sexually, or physically abused,  
89 the child shall be given notice of all pretrial discovery motions,  
90 and the notice must be given in sufficient time to allow the  
91 guardian ad litem or counsel for the child to file any pleadings  
92 deemed appropriate to that situation.



93           (6)   (a)   In a proceeding involving an alleged offense  
94 against a child, the prosecuting attorney, the child's attorney,  
95 the child's parent or legal guardian, or the guardian ad litem may  
96 apply for an order that a deposition be taken of the child's  
97 testimony and that the deposition be recorded and preserved on  
98 videotape and by stenographic means.

99           (b)   The court shall make a preliminary finding as to  
100 whether, at the time of trial, the child is likely to be unable to  
101 testify in open court in the physical presence of the defendant,  
102 jury, judge, or public for any of the following reasons:

103                   (i)   The child will be unable to testify because of  
104 fear.

105                   (ii)   There is a substantial likelihood,  
106 established by expert testimony, that the child would suffer  
107 emotional trauma from testifying in open court.

108                   (iii)   The child suffers a mental or other  
109 infirmity or medical condition which could potentially prevent the  
110 child from being present to testify at the trial.

111                   (iv)   Conduct of the defendant or defense counsel  
112 may cause or already has caused the child to be unable to testify  
113 or continue to testify out of fear or emotional distress.

114           (c)   If the court finds that the child is likely to be  
115 unable to testify in open court for any of the reasons stated in  
116 subsection (6) (b), the court shall order that the child's



117 deposition be taken and preserved by videotape and stenographic  
118 means.

119 (d) The trial judge shall preside at the videotape  
120 deposition of a child and shall rule on all questions as if at  
121 trial. The only other persons who may be permitted to be present  
122 at the proceeding are:

123 (i) The prosecuting attorney or attorneys;

124 (ii) The attorney or attorneys for the defendant;

125 (iii) The child's attorney or attorneys and  
126 guardian ad litem;

127 (iv) Persons necessary to operate the videotape  
128 equipment;

129 (v) The defendant, unless the court, pursuant to  
130 this section, determines the defendant should be present by  
131 closed-circuit television; and

132 (vi) Other persons whose presence is determined by  
133 the court to be necessary to the welfare and well-being of the  
134 child.

135 The defendant shall be afforded the rights applicable to  
136 defendants during trial, including the right to an attorney, the  
137 right to be confronted with the witness against the defendant, and  
138 the right to cross-examine the child.

139 (e) (i) If the court finds the child is unable to  
140 testify in open court, based on evidence that the child is unable  
141 to testify in the physical presence of the defendant, the court



142 may order that the defendant, including a defendant represented  
143 pro se, be excluded from the room in which the deposition is  
144 conducted. If the court orders that the defendant be excluded  
145 from the deposition room, the court shall order that two-way  
146 closed-circuit television equipment be used as provided in  
147 subsection (4) of this section.

148 (ii) The complete record of the examination of the  
149 child, including the image and voices of all persons who in any  
150 way participated in the examination, shall be made and preserved  
151 on videotape in addition to being stenographically recorded. The  
152 videotape shall be transmitted to the clerk of the court in which  
153 the action is pending and shall be made available for viewing to  
154 the prosecuting attorney, the defendant, and the defendant's  
155 attorney during ordinary business hours.

156 (f) If, at the time of trial, the court finds that the  
157 child is unable to testify for a reason described in subsection  
158 (7)(b), the court may admit into evidence the child's videotaped  
159 deposition in lieu of the child's testimony at trial. The court's  
160 ruling must be supported by findings on the record.

161 (g) Upon timely receipt of notice that new evidence has  
162 been discovered after the original videotaping and before or  
163 during trial, the court, for good cause shown, may order an  
164 additional videotaped deposition. The testimony of the child  
165 shall be restricted to the matters specified by the court as the  
166 basis for granting the order.



167           (h) In connection with the taking of a videotaped  
168 deposition, the court may enter a protective order for the purpose  
169 of protecting the privacy or emotional well-being of the child or  
170 for any other purposes.

171           (i) The videotape of a deposition taken under this  
172 paragraph shall be destroyed five (5) years after the date on  
173 which the trial court entered its judgment, but not before a final  
174 judgment is entered on appeal, including Supreme Court review.  
175 The videotape shall become part of the court record and be kept by  
176 the court until it is destroyed.

177           **SECTION 2.** This act shall take effect and be in force from  
178 and after July 1, 2015.

