

FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE  
PARENT-CHILD RELATIONSHIP  
SUBTITLE A. GENERAL PROVISIONS

CHAPTER 104. EVIDENCE

Sec. 104.001. RULES OF EVIDENCE. Except as otherwise provided, the Texas Rules of Evidence apply as in other civil cases. Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 6.002, eff. September 1, 2005.

Sec. 104.002. PRERECORDED STATEMENT OF CHILD. If a child 12 years of age or younger is alleged in a suit under this title to have been abused, the recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence if:

(1) no attorney for a party 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 is afforded an opportunity to view the recording before it is offered into evidence.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 104.003. PRERECORDED VIDEOTAPED TESTIMONY OF CHILD.

(a) The court may, on the motion of a party to the proceeding, order

that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding.

(b) 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.

(c) Only the attorneys for the parties may question the child.

(d) The persons operating the equipment shall be placed in a manner that prevents the child from seeing or hearing them.

(e) The court 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 courtroom.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 104.004. REMOTE TELEVISED BROADCAST OF TESTIMONY OF CHILD. (a) If in a suit a child 12 years of age or younger is alleged to have been abused, the court may, on the motion of a party to the proceeding, 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 to be viewed by the court and the parties.

(b) The procedures that apply to prerecorded videotaped testimony of a child apply to the remote broadcast of testimony of a child.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.

Sec. 104.005. SUBSTITUTION FOR IN-COURT TESTIMONY OF CHILD.

(a) If the testimony of a child is taken as provided by this chapter, the child may not be compelled to testify in court during the proceeding.

(b) The court may allow the testimony of a child of any age to be taken in any manner provided by this chapter if the child, because of a medical condition, is incapable of testifying in open court.

Added by Acts 1995, 74th Leg., ch. 20, Sec. 1, eff. April 20, 1995.  
Amended by Acts 1995, 74th Leg., ch. 751, Sec. 11, eff. Sept. 1, 1995.

Sec. 104.006. HEARSAY STATEMENT OF CHILD ABUSE VICTIM. In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability and:

(1) the child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or

(2) the court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 4, eff. Sept. 1, 1997.

Sec. 104.007. VIDEO TESTIMONY OF CERTAIN PROFESSIONALS.

(a) In this section, "professional" has the meaning assigned by Section [261.101\(b\)](#).

(b) In a proceeding brought by the Department of Family and Protective Services concerning a child who is alleged in a suit to have been abused or neglected, the court may order that the testimony of a professional be taken outside the courtroom by videoconference:

(1) on the agreement of the department's counsel and respondent's counsel; or

(2) if good cause exists, on the court's own motion.

(c) In ordering testimony to be taken as provided by Subsection (b), the court shall ensure that the videoconference testimony allows:

(1) the parties and attorneys involved in the proceeding to be able to see and hear the professional as the professional testifies; and

(2) the professional to be able to see and hear the parties and attorneys examining the professional while the professional is testifying.

(d) If the court permits the testimony of a professional by videoconference as provided by this section to be admitted during the proceeding, the professional may not be compelled to be physically present in court during the same proceeding to provide the same testimony unless ordered by the court.

Added by Acts 2003, 78th Leg., ch. 266, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 9, eff. September 1, 2015.

Sec. 104.008. CERTAIN TESTIMONY PROHIBITED. (a) A person may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child at issue in a suit unless the person has conducted a child custody evaluation relating to the child under Subchapter D, Chapter 107.

(b) In a contested suit, a mental health professional may provide other relevant information and opinions, other than those prohibited by Subsection (a), relating to any party that the mental health professional has personally evaluated.

(c) This section does not apply to a suit in which the Department of Family and Protective Services is a party.

Added by Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 2.01, eff. September 1, 2015.