

ENGROSSED HOUSE
BILL NO. 1234

BY: WEBB, POPE, COLEMAN,
GREENWOOD, WEESE and
STANLEY of the HOUSE

and

RUBOTTOM of the SENATE

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING
SECTION 3, CHAPTER 111, O.S.L. 1984 (22 O.S. SUPP.
1990, SECTION 753), WHICH RELATES TO THE TAKING OF
TESTIMONY OF CHILDREN; ESTABLISHING A REBUTTABLE
PRESUMPTION; REQUIRING THE TESTIMONY OF CHILDREN TO
BE TAKEN OUTSIDE COURTROOM; PROVIDING AN EFFECTIVE
DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 111, O.S.L.
1984 (22 O.S. Supp. 1990, Section 753), is amended to read as
follows:

Section 753. A. This section shall apply only to a any
proceeding in the prosecution of an offense alleged to have been
committed against a child twelve (12) years of age or younger, and
shall apply only to the testimony of that child.

B. There is a rebuttable presumption that in all proceedings in
the prosecution of an offense alleged to have been committed against
a child twelve (12) years of age or younger, that to require the
testimony of the child to be taken in a courtroom and in the
presence of the defendant is not in the best interest of justice.

C. Except as otherwise provided by subsection B of this section, the court shall provide that the testimony of a child be taken in a room other than the courtroom. The court on the motion of the attorney for any party shall order that the testimony of the child be taken as provided either by paragraph 1 or 2 of this subsection.

1. The court may, ~~on the motion of the attorney for any party,~~ 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~~ or the finder of fact in the proceeding or both the court and the finder of fact. Only the attorneys for the defendant, the state and the child, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys 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 his testimony but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

~~C.~~ 2. The court may, ~~on the motion of the attorney for any party,~~ order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court ~~and~~ or the finder of fact in the proceeding or both the court and the finder of fact. Only those persons permitted to be present at the taking of testimony under ~~subsection B~~ paragraph 1 of this ~~section~~ subsection may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided in ~~subsection B~~ paragraph 1 of this ~~section~~ subsection. Only the attorneys may

question the child. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

- ~~1.~~ a. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- ~~2.~~ b. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
- ~~3.~~ c. Every voice on the recording is identified; and
- ~~4.~~ d. Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

D. ~~If the court orders the testimony of a child to be taken under subsections B or C of this section, the~~ Pursuant to the proceedings of this section, a child shall not be required to testify in court at the proceeding for which the testimony was taken.

SECTION 2. This act shall become effective July 1, 1991.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 4th day of March, 1991.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate