

ENGROSSED HOUSE  
BILL NO. 1381

BY: PILGRIM of the HOUSE

and

SMITH of the SENATE

AN ACT RELATING TO CIVIL PROCEDURE; AMENDING 12 O.S.  
1981, SECTION 2404, WHICH RELATES TO CHARACTER  
EVIDENCE; DISALLOWING EVIDENCE OF WRONGS TO BE  
ADMISSIBLE FOR CERTAIN PURPOSES; AMENDING 12 O.S.  
1981, SECTION 2407, WHICH RELATES TO SUBSEQUENT  
REMEDIAL MEASURES; CLARIFYING LANGUAGE; AMENDING 12  
O.S. 1981, SECTION 2410, WHICH RELATES TO CERTAIN  
PLEAS; PROHIBITING THE ADMISSIBILITY OF EVIDENCE OF  
CERTAIN PLEAS AND STATEMENTS; PROVIDING EXCEPTIONS;  
AMENDING 12 O.S. 1981, SECTION 2609, WHICH RELATES  
TO WITNESS CREDIBILITY; MODIFYING TYPE OF EVIDENCE  
USED FOR ATTACKING CREDIBILITY OF WITNESS; AMENDING  
12 O.S. 1981, SECTION 2615, AS AMENDED BY SECTION  
1, CHAPTER 109, O.S.L. 1988 (12 O.S. SUPP. 1990,  
SECTION 2615), WHICH RELATES TO EXCLUSION OF  
WITNESSES; PROHIBITING THE EXCLUSION OF CERTAIN  
PERSONS; AMENDING 12 O.S. 1981, SECTION 2801, WHICH  
RELATES TO DEFINITIONS; PROVIDING ADDITIONAL  
HEARSAY EXCEPTIONS; AND PROVIDING AN EFFECTIVE  
DATE.

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

SECTION 1. AMENDATORY 12 O.S. 1981, Section 2404, is amended to read as follows:

Section 2404. A. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving ~~that he acted~~ action in conformity therewith on a particular occasion, except:

1. Evidence of a pertinent trait of ~~his~~ character offered by an accused or by the prosecution to rebut the same;

2. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

3. Evidence of the character of a witness, as provided in Sections ~~607~~ 2607, ~~608~~ 2608 and ~~609~~ 2609 of this Code.

B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show ~~that he acted~~ action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

SECTION 2. AMENDATORY 12 O.S. 1981, Section 2407, is amended to read as follows:

Section 2407. When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose ~~including proof of~~, such as proving ownership, control, ~~impeachment~~ or feasibility of precautionary measures ~~where~~, if controverted, or impeachment.

SECTION 3. AMENDATORY 12 O.S. 1981, Section 2410, is amended to read as follows:

Section 2410. A. Except as otherwise provided in this paragraph, ~~evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.~~ section evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;
3. any statement made in the course of any proceedings under state procedure regarding either of the foregoing pleas; or
4. any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

B. However, such a statement is admissible in:

1. any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement, as a matter of justice, should be considered contemporaneously with it; or

2. a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

SECTION 4. AMENDATORY 12 O.S. 1981, Section 2609, is amended to read as follows:

Section 2609. A. For the purpose of attacking the credibility of a witness, ~~evidence:~~

1. Evidence that ~~he~~ a witness other than an accused has been convicted of a crime shall be admitted ~~if elicited from him or established by public record during cross-examination but only,~~ subject to Section 2403 of this title, if the crime:

~~1. Involved dishonesty or false statement, regardless of the punishment; or~~

~~2. Was punishable by death or imprisonment in excess of one (1) year, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the detriment of the defendant.~~ was punishable by death or imprisonment in excess of one (1) year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

2. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

B. Evidence of a conviction under this section is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is later, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Evidence of a conviction more than ten (10) years old, as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

C. Evidence of a conviction is not admissible under this Code if:

1. The conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one (1) year; or

2. The conviction has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

D. Evidence of juvenile adjudications is not admissible under this Code. The court in a criminal case may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

E. The pendency of an appeal from the conviction does not render evidence of that conviction inadmissible. Evidence of the pendency of an appeal is admissible.

SECTION 5. AMENDATORY 12 O.S. 1981, Section 2615, as amended by Section 1, Chapter 109, O.S.L. 1988 (12 O.S. Supp. 1990, Section 2615), is amended to read as follows:

Section 2615. At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The court may make the order of its own motion. This rule does not authorize exclusion of:

1. A party who is a natural person;

2. An officer or employee of a party which is not a natural person designated as its representative by its attorney; ~~or~~

3. A person whose presence is shown by a party to be essential to the presentation of the party's cause; or

4. The victim of an alleged criminal offense or a representative of said victim, in any criminal prosecution, upon the motion of the state to bar such exclusion, unless the court finds such exclusion to be in the interest of justice.

SECTION 6. AMENDATORY 12 O.S. 1981, Section 2801, is amended to read as follows:

Section 2801. For purposes of this Code:

1. A "statement" is:

- a. an oral or written assertion, or
- b. nonverbal conduct of a person, if it is intended by him as an assertion;

2. A "declarant" is a person who makes a statement;

3. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted; and

4. A statement is not hearsay if:

- a. the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is
  - (1) inconsistent with ~~his~~ the declarant's testimony, and was given under oath subject to the penalty of perjury at a ~~deposition,~~ trial, hearing or other proceeding, or in a deposition, or
  - (2) consistent with ~~his~~ the declarant's testimony and is offered to rebut an express or implied charge against ~~him~~ the declarant of recent fabrication or improper influence or motive~~;~~  or

(3) one of identification of a person made after perceiving the person; or

b. the statement is offered against a party and is

(1) ~~his~~ the party's own statement, in either ~~his~~ an individual or a representative capacity, or

(2) a statement of which ~~he~~ the party has manifested ~~his~~ an adoption or belief in its truth, or

(3) a statement by a person authorized by ~~him~~ the party to make a statement concerning the subject, or

(4) a statement by ~~his~~ the party's agent or servant concerning a matter within the scope of ~~his~~ the agency or employment, made during the existence of the relationship, or

(5) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

SECTION 7. This act shall become effective September 1, 1991.

Passed the House of Representatives the 27th day of February, 1991.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1991.

President of the Senate