

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2273

BY: HAMILTON (Jeff)

AS INTRODUCED

AN ACT RELATING TO CIVIL PROCEDURE; AMENDING 12 O.S. 1991, SECTION 2404, WHICH RELATES TO ADMISSIBILITY OF EVIDENCE; ADDING TO LIST OF CERTAIN EVIDENCE WHICH MAY BE ADMISSIBLE; AUTHORIZING ADMISSION OF CERTAIN EVIDENCE REGARDING DOMESTIC ABUSE; PROVIDING EXCEPTION; REQUIRING CERTAIN CONDITIONS; DEFINING TERMS; PROVIDING FOR CERTAIN FOUNDATIONS; AUTHORIZING ADMISSION OF CERTAIN EVIDENCE WITHOUT CERTAIN FOUNDATIONS; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 12 O.S. 1991, 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 action in conformity therewith on a particular occasion, except:

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

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~~ character evidence 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 2607, 2608 and 2609 of this ~~Code.~~ title; or

4. Evidence of a history of assaultive behavior between the victim and the accused and the accused lived in a familial or intimate relationship such as, but not limited to, spouse, ex-spouses, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time, or are currently in or have been in a dating, courtship or engagement relationship with the defendant, when the pattern of behavior shows motive and its relevancy, it may be admissible.

5. In a criminal case where either party can produce foundation evidence in support of a claim that evidence of prior assaultive or self-defense behavior or if a characterization of that behavior was assaultive or self-defensive, the evidence of the prior acts shall be admissible in evidence.

B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show 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, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding and there is a history of assaultive behavior between the victim and the accused and the accused lived in a familial or intimate relationship

such as, but not limited to, spouse, ex-spouse, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time or are currently in a dating, courtship or engagement relationship with the defendant.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2706 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. In any civil or criminal action, expert testimony is admissible by either the prosecution or the defense regarding the physical, emotional, or mental effects upon the beliefs, perceptions or behavior of victims of domestic abuse except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

B. The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Such expert opinion testimony shall not be considered a new scientific technique whose reliability is unproven.

C. For purposes of this section, "domestic abuse" is defined as provided in Section 40 of Title 22 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 754 of Title 22, unless there is created a duplication in numbering, reads as follows:

If a person is charged with an offense involving the use of force against another and pleads self-defense and the accused was with the victim in a familial or intimate relationship such as, but not limited to a spouse, ex-spouse, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons

who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, or are currently in or have been in a dating, courtship or engagement relationship with the defendant, the accused need not first show a hostile demonstration or overt act on the part of the victim in order to introduce evidence of the victim's prior assaults on the accused, including specific instances of conduct and domestic abuse nor to admit on expert's testimony as to the effects of the prior assaultive acts on the accused's state of mind.

SECTION 4. This act shall become effective September 1, 1992.

43-2-7106

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