

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1197

By: Benson of the House

and

Roberts of the Senate

AS INTRODUCED

An Act relating to the Oklahoma Evidence Code;

amending 22 O.S. 1991, Section 750, as renumbered by Section 1, Chapter 168, O.S.L. 1992 (12 O.S. Supp. 1992, Section 2412) and 12 O.S. 1991, Sections 2615 and 2803.1, as amended by Section 2, Chapter 301, O.S.L. 1992 (12 O.S. Supp. 1992, Section 2803.1), which relate to evidence in rape prosecutions, exclusion of witnesses, and extra-judicial statements by certain children; modifying rules of admissibility of evidence with respect to sexual offenses; making reputation or opinion evidence concerning certain sexual behavior inadmissible; specifying the limited circumstances under which evidence of prior sexual behavior of the victim is admissible; providing procedures for determining the admissibility of certain evidence; modifying rule governing the exclusion of witnesses; authorizing the admissibility of a child's hearsay statements describing physical abuse or sexual contact under certain circumstances; repealing Section 1, Chapter 301, O.S.L. 1992 (12 O.S. Supp. 1992, Section 2611.1)

and 22 O.S. 1991, Section 752, as amended by Section 3, Chapter 301, O.S.L. 1992 (22 O.S. Supp. 1992, Section 752), which relate to the testimony or recorded statements of children twelve years of age or younger; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 750, as renumbered by Section 1, Chapter 168, O.S.L. 1992 (12 O.S. Supp. 1992, Section 2412), is amended to read as follows:

Section 2412. A. ~~In any prosecution for rape or assault with intent to commit rape, opinion evidence of, reputation evidence of and evidence as to specific instances of the complaining witness' sexual conduct is not admissible on behalf of the defendant in order to prove consent by the complaining witness. Provided that this section shall not apply to evidence of the complaining witness' sexual conduct with or in the presence of the defendant.~~

~~B. If the prosecutor introduces evidence or testimony relating to the complaining witness' sexual conduct, the defendant may cross-examine the witness giving such testimony and offer relevant evidence or testimony limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor. In a criminal case in which a person is accused of a sexual offense against another person, the following is not admissible:~~

~~1. Evidence of reputation or opinion regarding other sexual behavior of a victim or the sexual offense alleged.~~

~~2. Evidence of specific instances of sexual behavior of an alleged victim with persons other than the accused offered on the issue of whether the alleged victim consented to the sexual behavior with respect to the sexual offense alleged.~~

B. The provisions of subsection A of this section do not require the exclusion of evidence of:

1. Specific instances of sexual behavior if offered for a purpose other than the issue of consent, including proof of the source of semen, pregnancy, disease, injury, mistake, or the intent of the accused;

2. False allegations of sexual offenses; or

3. Sexual behavior with persons other than the accused which occurs at the time of the event giving rise to the sexual offense alleged.

C. 1. If the defendant intends to offer evidence described in subsection B of this section, the defendant shall file a written motion to offer such evidence accompanied by an offer of proof not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

2. If the court determines that the motion and offer of proof described in paragraph 1 of this subsection contains evidence described in subsection B of this section, the court may order an in-camera hearing to determine whether the proffered evidence is admissible under subsection B of this section.

SECTION 2. AMENDATORY 12 O.S. 1991, 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;
3. A person whose presence is shown by a party to be essential to the presentation of the party's cause; ~~or~~
4. A parent, other relative, or next friend of a child twelve (12) years of age or under who is called to testify when the court deems it to be in the best interests of the child and the interests of justice; or
5. 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 3. AMENDATORY 12 O.S. 1991, Section 2803.1, as amended by Section 2, Chapter 301, O.S.L. 1992 (12 O.S. Supp. 1992, Section 2803.1), is amended to read as follows:

Section 2803.1 A. A statement made by a child twelve (12) years of age or younger, which describes any act of physical abuse against the child or any act of sexual contact performed with or on the child by another, is admissible in criminal and juvenile proceedings in the courts in this state if:

1. The court finds, in a hearing conducted outside the presence of the jury, that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age, and whether a lack of motive to fabricate exists; and

2. The child either:

- a. testifies or is available to testify at the proceedings or pursuant to the provisions of Section 753 et seq. of Title 22 of the Oklahoma Statutes, or
- b. is unavailable as defined in Section 2804 of this title as a witness. When the child is unavailable, such statement may be admitted only if there is corroborative evidence of the act.

B. A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the adverse party with an opportunity to prepare to answer the statement.

~~C. Whenever the court deems it to be in the best interest of a child twelve (12) years of age or under who is testifying pursuant to paragraph 1 of subsection A of this section, a parent of the child who is not a defendant in the case, relative, or next friend as determined by the court, may be allowed to be present during the testimony of the child.~~

SECTION 4. REPEALER Section 1, Chapter 301, O.S.L. 1992 (12 O.S. Supp. 1992, Section 2611.1) and 22 O.S. 1991, Section 752, as amended by Section 3, Chapter 301, O.S.L. 1992 (22 O.S. Supp. 1992, Section 752), are hereby repealed.

SECTION 5. This act shall become effective September 1, 1993.

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