STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2182 By: Mass

AS INTRODUCED

An Act relating to evidence; stating legislative intent regarding protection of child witnesses; defining terms; establishing certain procedures to be followed by the court to determine appropriateness of closing hearing to public; providing for order stating findings; allowing the testimony of child to be taken in location other than courtroom; providing for explanation of court procedures; providing for accompaniment of minor witness by support person; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2803.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of children, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "Minor witness" means any witness in a criminal proceeding that is under sixteen (16) years of age; and

2. "Support person" means a parent, other relative or a next friend chosen by the minor witness to accompany the minor witness to court proceedings.

C. 1. In any criminal proceeding, the court, upon motion of the district attorney, shall conduct a hearing to determine whether the testimony of a minor witness shall be closed to the public. In making the decision, the court shall consider:

a. the nature and seriousness of the offense,

b. the age of the minor witness,

c. the relationship, if any, of the minor witness to the defendant,

d. the extent to which the size of the community would preclude the anonymity of the minor witness,

e. the likelihood of public disgrace of the minor witness,

f. whether there is an overriding public interest in having the testimony of the minor presented in open court,

g. whether the district attorney has demonstrated a substantial risk that the identity of the minor witness would be disclosed to the public during the proceeding,

h. whether the district attorney has demonstrated substantial probability that the disclosure of the identity of the minor witness would cause serious harm to the minor witness,

i. whether the minor witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the minor witness, and

j. other factors the court may deem necessary to protect the interests of justice.

2. The court shall enter an order stating its findings. If the court determines that the testimony of the minor witness shall be closed to the public, the court shall in its order establish who can be present during the testimony of the minor witness, which shall include:

a. the defendant and defense counsel,

b. any officer having custody of the defendant,

c. the district attorney or designee and a representative for the state,

d. court personnel as necessary to conduct the hearing, including but not limited to the judge, the court clerk, the bailiff, and the court reporter,

e. jury members, if appropriate, and

f. the minor witness and a support person for the minor witness.

D. If the court determines it to be appropriate, the testimony of the minor witness may be taken in chambers or in some other comfortable place other than the courtroom. When the testimony of a minor witness is to be taken in a courtroom, the minor witness and support person shall be brought into the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, the prosecutor and the defense attorney. This meeting shall be for the purpose of explaining the court procedures to the minor witness and to allow the attorneys an opportunity to establish a rapport with the minor witness to facilitate later questioning. No one shall discuss the defendant or any facts of the case with the minor witness during this meeting.

E. A minor witness shall have the right to be accompanied by a support person while giving testimony at any criminal proceeding. The support person shall not discuss the testimony of the minor

witness with any other witnesses and shall be admonished by the court to not sway, prompt or influence the testimony of the minor witness in any way.

SECTION 2. This act shall become effective November 1, 1996.

45-2-7830 LAC