

ENROLLED HOUSE
BILL NO. 2442

By: Vaughn of the House

and

Hendrick of the Senate

An Act relating to civil procedure; amending 12 O.S. 1991, Section 2803.1, as last amended by Section 3, Chapter 197, O.S.L. 1993 (12 O.S. Supp. 1997, Section 2803.1), which relates to statements of children describing acts of physical abuse or sexual contact; eliminating ambiguity concerning age of child to which law applies; making law applicable to children who have not attained thirteen years of age; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 2803.1, as last amended by Section 3, Chapter 197, O.S.L. 1993 (12 O.S. Supp. 1997, Section 2803.1), is amended to read as follows:

Section 2803.1 A. A statement made by a child ~~twelve (12)~~ who has not attained thirteen (13) 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.

SECTION 2. 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 25th day of February, 1998.

Speaker of the House of Representatives

Passed the Senate the 30th day of March, 1998.

President of the Senate