

and

Dorman of the House

An Act relating to civil and criminal procedure; amending Section 2, Chapter 405, O.S.L. 2003, 12 O.S. 2001, Section 2803.1 (12 O.S. Supp. 2003, Section 2611.4), and 22 O.S. 2001, Section 765 which relate to Uniform Child Witness Testimony by Alternative Methods Act, admissibility of child witness and vulnerable adult hearsay testimony, and conditional examinations in criminal proceedings; modifying definitions of criminal and noncriminal proceedings; updating statutory references; authorizing court to allow certain witness to testify through certain alternative methods of testimony in certain conditional examinations; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 405, O.S.L. 2003 (12 O.S. Supp. 2003, Section 2611.4), is amended to read as follows:

Section 2611.4 As used in the Uniform Child Witness Testimony by Alternative Methods Act:

1. "Alternative method" means a method by which a child witness testifies which does not include all of the following:

- a. having the child testify in person in an open forum,
- b. having the child testify in the presence and full view of the finder of fact and presiding officer, and
- c. allowing all of the parties to be present, to participate, and to view and be viewed by the child;

2. "Child witness" means an individual under thirteen (13) years of age who has been or will be called to testify in a proceeding;

3. "Criminal proceeding" means a deposition, conditional examination ordered pursuant to Section 765 of Title 22 of the

Oklahoma Statutes, trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state, a juvenile certified to stand trial as an adult pursuant to Section 7303-4.3 of Title 10 of the Oklahoma Statutes, a juvenile prosecuted as an adult pursuant to Section 7306-1.1 of Title 10 of the Oklahoma Statutes, or a youthful offender prosecuted pursuant to the Youthful Offender Act; and

4. "Noncriminal proceeding" means a deposition, trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 2803.1, is amended to read as follows:

Section 2803.1 A. A statement made by a child who has not attained thirteen (13) years of age or a person who is an incapacitated person as such term is defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or on the child or incapacitated person 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 or of an incapacitated person, and whether a lack of motive to fabricate exists; and

2. The child or incapacitated person either:

- a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of ~~Section 753 et seq. of Title 22~~ the Uniform Child Witness Testimony by Alternative Methods Act or Section 2611.2 of Title 12 of the Oklahoma Statutes, or
- b. is unavailable as defined in Section 2804 of this title as a witness. When the child or incapacitated person 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 an 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 3. AMENDATORY 22 O.S. 2001, Section 765, is amended to read as follows:

Section 765. If the court or judge is satisfied that the examination of the witness is necessary an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on counsel for the opposing party within a specified time before that fixed for the examination. If the witness is a child under thirteen (13) years of age or a vulnerable adult as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, the court can allow the witness to testify through an alternative method pursuant to the provisions of the Uniform Child Witness Testimony by Alternative Methods Act or Section 2611.2 of Title 12 of the Oklahoma Statutes.

SECTION 4. 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 Senate the 2nd day of March, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2004.

Presiding Officer of the House
of Representatives