

ENROLLED HOUSE
BILL NO. 1635

By: Dorman and Askins of the
House

and

Gumm of the Senate

An Act relating to civil procedure; creating the Uniform Child Witness Testimony by Alternative Methods Act; providing short title; defining terms; providing scope of applicability; authorizing determination hearing; providing standards for determination; providing factors for determination; providing requirements for order allowing or disallowing testimony by alternative method; providing for child advocate for certain purpose; providing right of parties to examine or cross-examine child witness; providing for uniformity of application and construction; amending 12 O.S. 2001, Section 2611.2, as amended by Section 51, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2611.2), which relates to child and incapacitated witnesses; modifying scope to apply only to incapacitated witnesses; repealing 22 O.S. 2001, Section 753, which relates to testimony of certain children; 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 2611.3 of Title 12, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 9 of this act shall be known and may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.4 of Title 12, unless there is created a duplication in numbering, reads as follows:

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 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 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.5 of Title 12, unless there is created a duplication in numbering, reads as follows:

The Uniform Child Witness Testimony by Alternative Methods Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Testimony by Alternative Methods Act does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify in a proceeding conducted pursuant to the Oklahoma Children's Code or the Oklahoma Juvenile Code.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.6 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. The judge or presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The judge or presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the judge or presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The presence of the child is not required at the hearing unless ordered by the judge or presiding officer. In conducting the hearing, the judge or presiding officer shall not be bound by rules of evidence except the rules of privilege.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.7 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. In a criminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method only in the following situations:

1. The child may testify otherwise than in an open forum in the presence and full view of the finder of fact if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum; and

2. The child may testify other than face-to-face with the defendant if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

B. In a criminal proceeding, the child may have an advocate appointed by the court to monitor the potential for emotional trauma. The advocate shall be a court-appointed special advocate (CASA), a registered professional social worker, psychologist, or psychiatrist.

C. In a noncriminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method if the judge or presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making the finding, the judge or presiding officer shall consider:

1. The nature of the proceeding;
2. The age and maturity of the child;
3. The relationship of the child to the parties in the proceeding;
4. The nature and degree of emotional trauma that the child may suffer in testifying; and
5. Any other relevant factor.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.8 of Title 12, unless there is created a duplication in numbering, reads as follows:

If the judge or presiding officer determines that a standard under Section 5 of this act has been met, the judge or presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

1. Alternative methods reasonably available;
2. Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;

5. The importance of the proposed testimony of the child;

6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and

7. Any other relevant factor.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.9 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the determination of the judge or presiding officer.

B. An order allowing a child witness to testify by an alternative method shall:

1. State the method by which the child is to testify;

2. List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

3. State any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

4. State any condition or limitation upon the participation of individuals present during the testimony of the child; and

5. State any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the judge or presiding officer shall not be more restrictive of the rights of the parties than is necessary under the circumstance to serve the purposes of the order.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.10 of Title 12, unless there is created a duplication in numbering, reads as follows:

An alternative method ordered by the judge or presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2611.11 of Title 12, unless there is created a duplication in numbering, reads as follows:

In applying and construing the Uniform Child Witness Testimony by Alternative Methods Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 10. AMENDATORY 12 O.S. 2001, Section 2611.2, as amended by Section 51, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2002, Section 2611.2), is amended to read as follows:

Section 2611.2 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 and~~ incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

~~1. "Child witness" means any child witness in a criminal, civil, or juvenile proceeding who is under thirteen (13) years of age;~~

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

~~3. 2. "Incapacitated witness" means any witness in a criminal proceeding that is a person who is defined as an incapacitated person or vulnerable adult as such terms are defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes; and~~

~~4. 3. "Witness" means ~~child witness or~~ incapacitated witness.~~

C. The court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a witness shall be closed to the public. In making the decision, the court shall consider:

1. The nature and seriousness of the issues in the proceeding;

2. The age of the witness;

3. The relationship, if any, of the witness to the defendant;

4. The extent to which the size of the community would preclude the anonymity of the witness;

5. The likelihood of public disgrace of the witness;

6. Whether there is an overriding public interest in having the testimony of the witness presented in open court;

7. The substantial risk that the identity of the witness would be disclosed to the public during the proceeding;

8. The substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness;

9. Whether the witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the witness; and

10. Other factors the court may deem necessary to protect the interests of justice.

D. If the court determines that the testimony of the witness is to be closed to the public, the court shall in its order accordingly and set forth the persons who can be present during the taking of testimony of the witness, which shall include:

1. The parties to the proceeding and their counsel;
2. Any officer having custody of the witness;
3. Court personnel as may be necessary to conduct the hearing and maintain order, including but not limited to the judge, the court clerk, the bailiff, and the court reporter;
4. Jury members, if appropriate; and
5. The witness and a support person for the witness.

E. The testimony of the witness may be taken in the courtroom, in chambers, or in some other comfortable place. If the testimony of a witness is to be taken in a courtroom, the witness and support person shall be assembled in the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, and counsel for the parties. At this meeting court procedures shall be explained to the witness and counsel shall be given an opportunity to establish a rapport with the witness to facilitate taking the testimony of the witness at a later time. The facts involved in the proceeding shall not be discussed with the witness during this meeting.

F. A witness shall have the right to be accompanied by a support person while giving testimony in the proceeding, but the support person shall not discuss the testimony of the witness with any other witnesses or attempt to prompt or influence the testimony of the witness in any way.

SECTION 11. REPEALER 22 O.S. 2001, Section 753, is hereby repealed.

SECTION 12. This act shall become effective November 1, 2003.

Passed the House of Representatives the 27th day of May, 2003.

Presiding Officer of the House of
Representatives

Passed the Senate the 29th day of May, 2003.

Presiding Officer of the Senate