

EHB 1635

THE STATE SENATE
Thursday, March 27, 2003

ENGROSSED

House Bill No. 1635

As Amended

ENGROSSED HOUSE BILL NO. 1635 - By: DORMAN and ASKINS of the House
and GUMM of the Senate.

[civil procedure - Uniform Child Witness Testimony by
Alternative Methods Act - amending 12 O.S., Section 2611.2 -
incapacitated witnesses - repealing 22 O.S., Section 753 -
codification - effective date]

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:

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,

- 1 b. having the child testify in the presence and full view
2 of the finder of fact and presiding officer, and
3 c. allowing all of the parties to be present, to
4 participate, and to view and be viewed by the child;

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

8 3. "Criminal proceeding" means a trial or hearing before a
9 court in a prosecution of a person charged with violating a criminal
10 law of this state, a juvenile certified to stand trial as an adult
11 pursuant to Section 7303-4.3 of Title 10 of the Oklahoma Statutes, a
12 juvenile prosecuted as an adult pursuant to Section 7306-1.1 of
13 Title 10 of the Oklahoma Statutes, or a youthful offender prosecuted
14 pursuant to the Youthful Offender Act; and

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

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

21 The Uniform Child Witness Testimony by Alternative Methods Act
22 applies to the testimony of a child witness in a criminal or
23 noncriminal proceeding. However, the Uniform Child Witness

1 Testimony by Alternative Methods Act does not preclude, in a
2 noncriminal proceeding, any other procedure permitted by law for a
3 child witness to testify in a proceeding conducted pursuant to the
4 Oklahoma Children's Code or the Oklahoma Juvenile Code.

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

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

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

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

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

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

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

19 B. In a noncriminal proceeding, the judge or presiding officer
20 may allow a child witness to testify by an alternative method if the
21 judge or presiding officer finds by a preponderance of the evidence
22 that allowing the child to testify by an alternative method is
23 necessary to serve the best interests of the child or enable the

1 child to communicate with the finder of fact. In making the
2 finding, the judge or presiding officer shall consider:

3 1. The nature of the proceeding;

4 2. The age and maturity of the child;

5 3. The relationship of the child to the parties in the
6 proceeding;

7 4. The nature and degree of emotional trauma that the child may
8 suffer in testifying; and

9 5. Any other relevant factor.

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

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

17 1. Alternative methods reasonably available;

18 2. Available means for protecting the interests of or reducing
19 emotional trauma to the child without resort to an alternative
20 method;

21 3. The nature of the case;

22 4. The relative rights of the parties;

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

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

3 7. Any other relevant factor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Section 2611.2 A. It is the intent of the Legislature in
22 enacting this section to provide the court with discretion to employ
23 unusual court procedures to protect the rights of ~~children and~~

1 incapacitated persons, while ensuring the rights of a criminal
2 defendant and the integrity of the judicial process.

3 B. As used in this section:

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

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

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

15 ~~4.~~ 3. "Witness" means ~~child witness or~~ incapacitated witness.

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

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

20 2. The age of the witness;

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

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

- 1 5. The likelihood of public disgrace of the witness;
- 2 6. Whether there is an overriding public interest in having the
3 testimony of the witness presented in open court;
- 4 7. The substantial risk that the identity of the witness would
5 be disclosed to the public during the proceeding;
- 6 8. The substantial probability that the disclosure of the
7 identity of the witness would cause serious harm to the witness;
- 8 9. Whether the witness has disclosed information concerning the
9 case to the public in a manner which would preclude anonymity of the
10 witness; and
- 11 10. Other factors the court may deem necessary to protect the
12 interests of justice.
- 13 D. If the court determines that the testimony of the witness is
14 to be closed to the public, the court shall in its order accordingly
15 and set forth the persons who can be present during the taking of
16 testimony of the witness, which shall include:
- 17 1. The parties to the proceeding and their counsel;
- 18 2. Any officer having custody of the witness;
- 19 3. Court personnel as may be necessary to conduct the hearing
20 and maintain order, including but not limited to the judge, the
21 court clerk, the bailiff, and the court reporter;
- 22 4. Jury members, if appropriate; and
- 23 5. The witness and a support person for the witness.

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

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

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-25-03 - DO
21 PASS, As Amended.