

SB 1090

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THE STATE SENATE
Wednesday, February 18, 2004

Senate Bill No. 1090

SENATE BILL NO. 1090 - By: GUMM of the Senate 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; requiring court to determine applicability of 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

1 c. allowing all of the parties to be present, to
2 participate, and to view and be viewed by the child;

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

6 3. "Criminal proceeding" means a deposition, conditional
7 examination ordered pursuant to Section 765 of Title 22 of the
8 Oklahoma Statutes, trial or hearing before a court in a prosecution
9 of a person charged with violating a criminal law of this state, a
10 juvenile certified to stand trial as an adult pursuant to Section
11 7303-4.3 of Title 10 of the Oklahoma Statutes, a juvenile prosecuted
12 as an adult pursuant to Section 7306-1.1 of Title 10 of the Oklahoma
13 Statutes, or a youthful offender prosecuted pursuant to the Youthful
14 Offender Act; and

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

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

21 Section 2803.1 A. A statement made by a child who has not
22 attained thirteen (13) years of age or a person who is an
23 incapacitated person as such term is defined by the provisions of

1 Section 10-103 of Title 43A of the Oklahoma Statutes, which
2 describes any act of physical abuse against the child or
3 incapacitated person or any act of sexual contact performed with or
4 on the child or incapacitated person by another, is admissible in
5 criminal and juvenile proceedings in the courts in this state if:

6 1. The court finds, in a hearing conducted outside the presence
7 of the jury, that the time, content and totality of circumstances
8 surrounding the taking of the statement provide sufficient indicia
9 of reliability so as to render it inherently trustworthy. In
10 determining such trustworthiness, the court may consider, among
11 other things, the following factors: the spontaneity and consistent
12 repetition of the statement, the mental state of the declarant,
13 whether the terminology used is unexpected of a child of similar age
14 or of an incapacitated person, and whether a lack of motive to
15 fabricate exists; and

16 2. The child or incapacitated person either:
17 a. testifies or is available to testify at the
18 proceedings in open court or through an alternative
19 method pursuant to the provisions of ~~Section 753 et~~
20 ~~seq. of Title 22~~ the Uniform Child Witness Testimony
21 by Alternative Methods Act or Section 2611.2 of Title
22 12 of the Oklahoma Statutes, or

1 b. is unavailable as defined in Section 2804 of this
2 title as a witness. When the child or incapacitated
3 person is unavailable, such statement may be admitted
4 only if there is corroborative evidence of the act.

5 B. A statement may not be admitted under this section unless
6 the proponent of the statement makes known to the adverse party an
7 intention to offer the statement and the particulars of the
8 statement at least ten (10) days in advance of the proceedings to
9 provide the adverse party with an opportunity to prepare to answer
10 the statement.

11 SECTION 3. AMENDATORY 22 O.S. 2001, Section 765, is
12 amended to read as follows:

13 Section 765. If the court or judge is satisfied that the
14 examination of the witness is necessary an order must be made that
15 the witness be examined conditionally at a specified time and place,
16 and that a copy of the order be served on counsel for the opposing
17 party within a specified time before that fixed for the examination.
18 If the witness is a child under thirteen (13) years of age or a
19 vulnerable adult as defined in Section 10-103 of Title 43A of the
20 Oklahoma Statutes, the court shall determine whether the witness
21 should be allowed to testify through an alternative method pursuant
22 to the provisions of the Uniform Child Witness Testimony by

1 Alternative Methods Act or Section 2611.2 of Title 12 of the
2 Oklahoma Statutes.

3 SECTION 4. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-10-04 - DO
8 PASS, As Coauthored.