

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1635 _____

By: Dorman and Askins

AS INTRODUCED

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 right of parties to examine or cross-examine child witness; providing for uniformity of application and construction; repealing 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 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:

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 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. REPEALER 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) and 22 O.S. 2001, Section 753, are hereby repealed.

SECTION 11. This act shall become effective November 1, 2003.

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