

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 161

By: Anderson

4  
5  
6 AS INTRODUCED

7 An Act relating to hearsay statements; amending 12  
8 O.S. 2001, Section 2803.1, as amended by Section 2,  
9 Chapter 445, O.S.L. 2004 (12 O.S. Supp. 2010, Section  
10 2803.1), which relates to statements of children or  
11 incapacitated persons; modifying procedure to  
12 determine admissibility of certain statements;  
13 defining term; and providing an effective date.

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

15 SECTION 1. AMENDATORY 12 O.S. 2001, Section 2803.1, as  
16 amended by Section 2, Chapter 445, O.S.L. 2004 (12 O.S. Supp. 2010,  
17 Section 2803.1), is amended to read as follows:

18 Section 2803.1. A. A statement made by a child who has not  
19 attained thirteen (13) years of age at the time the statement was  
20 made or a person who is an incapacitated person as such term is  
21 defined by the provisions of Section 10-103 of Title 43A of the  
22 Oklahoma Statutes, which describes any act of physical abuse against  
23 the child or incapacitated person or any act of sexual contact  
24 performed with or on the child or incapacitated person by another,

1 is admissible in criminal and juvenile proceedings in the courts in  
2 this state if:

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

13 2. ~~The~~ the child or incapacitated person either:

14 a. ~~testifies~~

15 1. Testifies or is available to testify at the proceedings in  
16 open court or through an alternative method pursuant to the  
17 provisions of the Uniform Child Witness Testimony by Alternative  
18 Methods Act or Section 2611.2 of Title 12 of the Oklahoma Statutes,  
19 i or

20 b. ~~is~~

21 2. Is unavailable as defined in Section 2804 of this title as a  
22 witness. When the child or incapacitated person is unavailable,  
23 such statement may be admitted only if ~~there is corroborative~~  
24 ~~evidence of the act;~~

- 1           a. the child or incapacitated person testified at another  
2           hearing or deposition where the adverse party had an  
3           opportunity and similar motive to develop the  
4           witness's testimony concerning the physical abuse or  
5           sexual contact, or  
6           b. the child's or incapacitated person's statement was  
7           non-testimonial.

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

14           C. In addition to the provisions of subsection A of this  
15 section, a statement made by a child who has not attained thirteen  
16 (13) years of age at the time the statement was made, which  
17 describes any act of physical abuse against the child or any act of  
18 sexual contact performed with or on the child by another, is  
19 admissible at a preliminary hearing, prosecutive merit hearing, or  
20 in any criminal or juvenile proceeding other than a criminal or  
21 juvenile delinquent trial on the merits, regardless of whether the  
22 child or incapacitated person testifies, if:

- 23           1. The statement was made to a person qualified to conduct a  
24 forensic interview; and

1        2. A recording of the child's interview or, if no recording  
2 exists, a significant summary of the child's interview is made  
3 available to the adverse party at least five (5) days before the  
4 hearing in which it is to be offered.

5        D. For purposes of subsection C of this section, "person  
6 qualified to conduct a forensic interview" means any person who has  
7 successfully completed a training course of at least thirty (30)  
8 hours in interviewing children in a non-suggestive manner.

9        SECTION 2. This act shall become effective November 1, 2011.

10

11        53-1-353            TEK            1/7/2011 4:18:12 PM

12

13

14

15

16

17

18

19

20

21

22

23

24