HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1509 By: Peterson of the House

and

Crain of the Senate

AS INTRODUCED

An Act relating to civil procedure; amending 12 O.S. 2011, Section 2803.1, which relates to hearsay; modifying certain age limitation; defining term; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 2803.1, is amended to read as follows:

Section 2803.1 A. A statement made by a child who has not attained thirteen (13) years of age, a child thirteen (13) years of age or older who has a disability or a person who is an incapacitated person as such term is defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

on the child or incapacitated person by another, is admissible in criminal and juvenile proceedings in the courts in this state if:

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

2. The child or incapacitated person either:

a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the Uniform Child Witness Testimony by Alternative Methods Act or Section 2611.2 of ~~Title 12 of the Oklahoma Statutes~~ <u>this title</u>, or

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

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

C. As used in this section, "disability" means a physical or mental impairment which substantially limits one or more of the major life activities of the child or the child is regarded as having such an impairment by a competent medical professional.

SECTION 2. This act shall become effective November 1, 2013.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/20/2013 - DO PASS, As Coauthored.

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