

1 **SENATE FLOOR VERSION**

2 March 19, 2013

3 ENGROSSED HOUSE
4 BILL NO. 1509

By: Peterson and Nollan of the
House

5 and

6 Crain of the Senate

7
8
9 An Act relating to civil procedure; amending 12 O.S.
10 2011, Section 2803.1, which relates to hearsay;
11 modifying certain age limitation; defining term; and
12 providing an effective date.

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

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

16 Section 2803.1. A. A statement made by a child who has not
17 attained thirteen (13) years of age, a child thirteen (13) years of
18 age or older who has a disability or a person who is an
19 incapacitated person as such term is defined by the provisions of
20 Section 10-103 of Title 43A of the Oklahoma Statutes, which
21 describes any act of physical abuse against the child or
22 incapacitated person or any act of sexual contact performed with or
23 on the child or incapacitated person by another, is admissible in
24 criminal and juvenile proceedings in the courts in this state if:

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

11 2. The child or incapacitated person either:

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

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

22 B. A statement may not be admitted under this section unless
23 the proponent of the statement makes known to the adverse party an
24 intention to offer the statement and the particulars of the

1 statement at least ten (10) days in advance of the proceedings to
2 provide the adverse party with an opportunity to prepare to answer
3 the statement.

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

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

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 March 19, 2013 - DO PASS

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