STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

HOUSE BILL 2591 By: Peterson

AS INTRODUCED

An Act relating to court proceedings; stating legislative intent; permitting child witness to testify accompanied by support person; allowing child witness to testify accompanied by therapeutic dog; defining terms; amending 12 O.S. 2011, Section 2611.2, which relates to witness testimony; permitting incapacitated witness to testify accompanied by therapeutic dog; 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 2611.12 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Oklahoma Legislature in enacting this section to recognize the special circumstances and needs of a child witness during criminal court proceedings, and to protect the child witness from any unnecessary emotional discomfort or anguish.

B. In any criminal proceeding, a child witness shall have the right to be accompanied by a support person while giving testimony in the proceeding, but the support person shall not discuss the

testimony of the child witness with any other witnesses or attempt to prompt or influence the testimony of the child witness.

C. The child witness shall be afforded the opportunity to have a certified therapeutic dog accompanied by the handler of the certified therapeutic dog in lieu of a support person.

D. As used in this section:

1. "Certified therapeutic dog" means a dog which has received the requisite training or certification from the American Kennel Club, Therapy Dogs Incorporated, or an equivalent organization to perform the duties associated with therapy dogs in places such as hospitals, nursing homes, and other facilities where the emotional benefits of therapy dogs are recognized. Prior to the use of a certified therapeutic dog the court shall conduct a hearing to verify:

a. the credentials of the certified therapeutic dog,

b. the certified therapeutic dog is appropriately insured, and

c. a relationship has been established between the child witness and the certified therapeutic dog in anticipation of testimony;

2. "Child witness" means an individual younger than thirteen (13) years of age who has been or will be called to testify in a criminal proceeding; and

3. "Support person" means a parent, other relative or a next friend chosen by the witness to accompany the witness to criminal proceedings.

SECTION 2. AMENDATORY 12 O.S. 2011, Section 2611.2, is amended to read as follows:

Section 2611.2 A. It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "Support person" means a parent, other relative or a next friend chosen by the witness to accompany the witness to court proceedings;

2. "Incapacitated witness" means any witness in a criminal proceeding that is a person who is defined as an incapacitated person or vulnerable adult as such terms are defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes; and

3. "Witness" means incapacitated witness.

C. The court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a witness shall be closed to the public. In making the decision, the court shall consider:

1. The nature and seriousness of the issues in the proceeding;

2. The age of the witness;

3. The relationship, if any, of the witness to the defendant;

4. The extent to which the size of the community would preclude the anonymity of the witness;

5. The likelihood of public disgrace of the witness;

6. Whether there is an overriding public interest in having the testimony of the witness presented in open court;

7. The substantial risk that the identity of the witness would be disclosed to the public during the proceeding;

8. The substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness;

9. Whether the witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the witness; and

10. Other factors the court may deem necessary to protect the interests of justice.

D. If the court determines that the testimony of the witness is to be closed to the public, the court shall in its order accordingly and set forth the persons who can be present during the taking of testimony of the witness, which shall include:

1. The parties to the proceeding and their counsel;

2. Any officer having custody of the witness;

3. Court personnel as may be necessary to conduct the hearing and maintain order, including but not limited to the judge, the court clerk, the bailiff, and the court reporter;

4. Jury members, if appropriate; and

5. The witness and a support person for the witness.

E. The testimony of the witness may be taken in the courtroom, in chambers, or in some other comfortable place. If the testimony of a witness is to be taken in a courtroom, the witness and support person shall be assembled in the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, and counsel for the parties. At this meeting court procedures shall be explained to the witness and counsel shall be given an opportunity to establish a rapport with the witness to facilitate taking the testimony of the witness at a later time. The facts involved in the proceeding shall not be discussed with the witness during this meeting.

F. A witness shall have the right to be accompanied by a support person while giving testimony in the proceeding, but the support person shall not discuss the testimony of the witness with any other witnesses or attempt to prompt or influence the testimony of the witness in any way. <u>In lieu of a support person, a witness shall be afforded the opportunity to have a certified therapeutic dog accompanied by the handler of the certified therapeutic dog pursuant to the provisions set forth in Section 1 of this act.</u>

SECTION 3. This act shall become effective November 1, 2014.

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