

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3875

By: Brewer

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6 AS INTRODUCED

7 An Act relating to evidence; allowing domestic
8 violence victims to testify via videoconference;
9 setting forth standards for proceedings conducted by
10 videoconference; setting forth system requirements
11 for videoconferencing technology; providing for
12 transmission of documents; requiring certain
13 stipulations and waivers; providing for the presence
14 of a support person; defining terms; affirming
15 judicial discretion; setting forth factors to be
16 considered; requiring notice and allowing objection
17 when remote testimony is proposed; maintaining
18 defendants' rights in criminal proceedings; providing
19 for codification; and providing an effective date.

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

26 SECTION 1. NEW LAW A new section of law to be codified
27 in the Oklahoma Statutes as Section 2616 of Title 12, unless there
28 is created a duplication in numbering, reads as follows:

29 A. Victims of domestic violence who are called to testify in
30 any criminal or noncriminal proceeding at which their abuser is
31 present may testify via videoconference, as set forth in the
32 following general provisions:
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1 1. A proceeding conducted by videoconference shall be conducted
2 in the same manner as if the parties had appeared in person, and the
3 judge presiding over the matter may exercise all powers consistent
4 with the proceeding;

5 2. In any proceeding conducted by videoconference, the remote
6 location shall be considered an extension of the courtroom and held
7 before the judge who is presiding. The judge's pronouncements,
8 instructions and rulings shall have the same force and binding
9 effect as if all participants had been physically present in the
10 courtroom. The presiding judge shall consider and rule on any
11 objections of a party or nonparty witness prior to beginning the
12 proceeding;

13 3. An oath administered by the judge, court reporter or other
14 authorized person to a witness, interpreter or a party in a
15 proceeding conducted by videoconference shall have the same force
16 and binding effect as if the oath had been administered to a person
17 physically present in the courtroom;

18 4. In any proceeding conducted by videoconference, a court
19 reporter, who can see and hear the witness and other participants,
20 may administer oaths, record notes and transcribe the proceeding
21 without being physically present in the same locale as either the
22 judge or the remote participants;

23 5. In any proceeding conducted by videoconference, an
24 interpreter, who can see and hear the witness and other

1 participants, may provide interpreter services without being
2 physically present in the same locale as either the judge or the
3 remote participants;

4 6. Any system used for conducting a proceeding by
5 videoconferencing shall conform to the following minimum
6 requirements:

7 a. participants shall be able to see, hear and
8 communicate with each other simultaneously,

9 b. participants shall be able to see, hear and otherwise
10 observe any physical evidence or exhibit presented,

11 c. video and sound quality shall be adequate to allow
12 participants to observe demeanor and nonverbal
13 communications and to clearly hear what is taking
14 place to the same extent as if they were present in
15 the courtroom,

16 d. the location from which the trial judge is presiding
17 shall be accessible to the public to the same extent
18 as the proceeding would be if not conducted by
19 videoconference, and

20 e. when feasible, a party and the party's attorney should
21 be allowed to communicate privately off the record by
22 use of a private communication facility, including,
23 but not limited to, cellphone, landline, facsimile or
24 Skype, during the proceeding, or during a break. The

1 court is not required to provide a private
2 communication facility if none is available;

3 7. Any pleading, other document or exhibit used in a proceeding
4 conducted by videoconference may be transmitted between the court's
5 location and any remote site by electronic means, including, but not
6 limited to, facsimile, scan or email. Signatures on any document
7 transmitted by electronic means shall have the same force and effect
8 as an original signature;

9 8. Unless otherwise ordered by the court, any original exhibit
10 offered or admitted into evidence from a remote site shall be
11 transferred by the moving party to the court reporter within two (2)
12 business days of the close of the proceeding. If no court reporter
13 was utilized during the proceeding, the judge shall instruct the
14 moving party regarding the transmission and custody of the exhibit;

15 9. Any stipulation or waiver of any right to be present in the
16 courtroom shall be obtained at the commencement of the proceeding,
17 either on the record or in writing. A written stipulation or waiver
18 shall be filed in the case and made a part of the record;

19 10. In all other respects, a proceeding conducted using
20 videoconferencing technology shall be conducted in the same manner
21 as any proceeding conducted in person at one site; and

22 11. In any proceeding conducted by videoconference, the witness
23 may elect to have a support person physically present with him or
24

1 her. The support person shall be an adult who is not a participant
2 as defined in paragraph 2 of subsection B of this section.

3 B. For purposes of this section, the following definitions
4 shall apply:

5 1. "Videoconferencing" is any interactive technology that sends
6 video, voice and data signals over a transmission circuit so that
7 two or more individuals or groups can communicate with each other
8 simultaneously using video monitors; and

9 2. "Participants" include litigants, crime victims, counsel,
10 witnesses while on the stand, essential court staff and
11 interpreters, but excludes other interested persons and the public
12 at large.

13 C. Nothing in this section is intended to limit the broad
14 discretion of any judge regarding the use of videoconferencing. The
15 judge may consider one or more of the following criteria in
16 determining whether to permit the use of videoconferencing
17 technology in a particular case:

18 1. Whether any undue surprise or prejudice would result;

19 2. Whether the procedure would allow for full and effective
20 cross-examination, especially where such cross-examination would
21 involve documents or other exhibits;

22 3. Whether a physical liberty or other fundamental interest is
23 at stake in the proceeding;

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1 4. Whether the court is satisfied that it can sufficiently know
2 and control the proceedings at the remote location so as to
3 effectively extend the courtroom to such location;

4 5. Whether the participation of an individual from a remote
5 location presents such person in a diminished or distorted sense
6 such that it negatively reflects upon such individual to persons
7 present in the courtroom;

8 6. Whether the use of videoconferencing diminishes or detracts
9 from the dignity, solemnity and formality of the proceeding such as
10 to undermine integrity, fairness and effectiveness;

11 7. Waivers and stipulations of the parties offered and agreed
12 upon and approved by the court, including waiver of any requirement
13 set forth in this section, or stipulation to any different or
14 modified procedure; and

15 8. Such other factors as the court may, in each individual
16 case, determine to be relevant.

17 D. A proponent of a domestic violence victim testifying via
18 videoconferencing technology at any civil or criminal proceeding
19 shall file and serve on the opposing party a notice of intent to
20 present testimony by videoconferencing technology at least thirty
21 (30) days prior to the scheduled start of such proceeding. Any
22 party may file an objection within ten (10) days of service of the
23 notice of intent. The court may, in its discretion, shorten the
24 time to file notice of intent and objection. If an objection is

1 filed, the court shall determine the objection in the exercise of
2 its discretion considering the criteria set forth in subsections A
3 and C of this section, with a detailed finding on the record.

4 E. Except as may otherwise be provided by law, a defendant in a
5 criminal case retains the right to be physically present in the
6 courtroom at all critical stages of the proceeding. This section is
7 not intended to limit existing rights or create new rights for a
8 defendant.

9 SECTION 2. This act shall become effective November 1, 2020.

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