

An Act

ENROLLED HOUSE
BILL NO. 2992

By: Bush, Ranson, and Talley of
the House

and

Floyd of the Senate

An Act relating to children; amending 10A O.S. 2021, Sections 1-4-505 and 1-4-506, which relate to testimony of child witnesses; amending 12 O.S. 2021, Sections 2611.4, 2611.12 and 2615, which relate to testimony of certain individuals; amending 22 O.S. 2021, Section 765, which relates to testimony of certain individuals; modifying age requirements; permitting a child adjudicated to be deprived to give testimony in room other than courtroom; allowing guardian ad litem to be present during testimony of child; modifying definition; providing statutory references; and providing an effective date.

SUBJECT: Children

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

SECTION 1. AMENDATORY 10A O.S. 2021, Section 1-4-505, is amended to read as follows:

Section 1-4-505. A. This section shall apply only to a proceeding brought within the purview of the Oklahoma Children's Code in which a child ~~twelve (12) years of age or younger~~ is alleged to be deprived, and shall apply only to the statement of that child or another child witness.

B. The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The court determines 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 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 the child 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, or
- b. is unavailable as a witness as defined in Section 2804 of Title 12 of the Oklahoma Statutes. When the child is unavailable, such statement may be admitted only if there is corroborative evidence of the act;

2. No attorney for any party is present when the statement is made. However, if appropriate facilities are utilized that allow observation of the child without the child's knowledge or awareness in any way, any such attorney may be present as an observer, but not as a participant, and no such attorney shall have any right to intervene, object, or otherwise make his or her presence known to the child before, after, or during the making of the statement of the child;

3. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is

otherwise clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

6. Every voice on the recording is identified;

7. The person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party;

8. Each party to the proceeding is afforded an opportunity to view the recording before the recording is offered into evidence; and

9. A copy of a written transcript of the recording transcribed by a licensed or certified court reporter is available to the parties.

A statement may not be admitted under this subsection unless the proponent of the statement makes known to the parties 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 parties with an opportunity to prepare to answer the statement.

SECTION 2. AMENDATORY 10A O.S. 2021, Section 1-4-506, is amended to read as follows:

Section 1-4-506. A. This section shall apply only to a proceeding brought under the Oklahoma Children's Code in which a child at the time of the testimony is alleged or adjudicated to be deprived, and shall apply only to the testimony of that child or other child witness.

B. 1. When appropriate facilities are reasonably available, the court shall, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom for review by:

- a. the court,
- b. the finder of fact, and
- c. the parties to the proceeding.

2. Only an attorney for each party, an attorney ad litem for the child, a guardian ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during the testimony of the child.

3. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the testimony of the child, but does not permit the child to see or hear them.

C. 1. The court shall, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before:

- a. the court,
- b. the finder of fact, and
- c. the parties to the proceeding.

2. Only those persons permitted to be present at the taking of testimony under subsection B of this section may be present during the taking of the child's testimony.

3. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing. The court shall ensure that:

- a. the recording is both visual and aural and is recorded on film or videotape or by other electronic means,
- b. the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered,
- c. every voice on the recording is identified, and
- d. each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

D. If the testimony of a child is taken as provided by subsection B or C of this section, the child shall not be compelled to testify in court during the proceeding.

E. If the testimony of a child is taken as provided in subsection B or C of this section, the attorney for any parent shall, on request, be permitted a recess of sufficient length to allow the attorney to consult with his or her client prior to conclusion of the testimony.

SECTION 3. AMENDATORY 12 O.S. 2021, Section 2611.4, is amended to read as follows:

Section 2611.4 As used in the Uniform Child Witness Testimony by Alternative Methods Act:

1. "Alternative method" means a method by which a child witness testifies which does not include all of the following:

- a. having the child testify in person in an open forum,
- b. having the child testify in the presence and full view of the finder of fact and presiding officer, and
- c. allowing all of the parties to be present, to participate, and to view and be viewed by the child;

2. "Child witness" means ~~an individual under thirteen (13) years of age~~ a child as defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes who has been or will be called to testify in a proceeding;

3. "Criminal proceeding" means a deposition, conditional examination ordered pursuant to Section 765 of Title 22 of the Oklahoma Statutes, trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state, a juvenile certified to stand trial as an adult pursuant to Section 2-2-403 of Title 10A of the Oklahoma Statutes, ~~a juvenile prosecuted as an adult pursuant to Section 2-5-101 of Title 10A of the Oklahoma Statutes,~~ or a youthful offender prosecuted pursuant to the Youthful Offender Act; and

4. "Noncriminal proceeding" means a deposition, trial or hearing before a court or an administrative agency of this state

having judicial or quasi-judicial powers, other than a criminal proceeding.

SECTION 4. AMENDATORY 12 O.S. 2021, Section 2611.12, is amended to read as follows:

Section 2611.12 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, if available, 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~~ Alliance of Therapy Dogs, 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~~ a child as defined by Section 1-1-105 of Title 10A

of the Oklahoma Statutes 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 5. AMENDATORY 12 O.S. 2021, Section 2615, is amended to read as follows:

Section 2615. At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The court may make the order of its own motion. This rule does not authorize exclusion of:

1. A party who is a natural person;
2. An officer or employee of a party which is not a natural person designated as its representative by its attorney;
3. A person whose presence is shown by a party to be essential to the presentation of the party's cause;
4. A parent, other relative, or next friend of a child ~~twelve (12) years of age or under~~ as defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes who is called to testify when the court deems it to be in the best interests of the child and the interests of justice; or
5. The victim of an alleged criminal offense or a representative, parent or other relative of said victim, in any criminal prosecution, upon the motion of the state to bar such exclusion, unless the court finds such exclusion to be in the interest of justice.

SECTION 6. AMENDATORY 22 O.S. 2021, Section 765, is amended to read as follows:

Section 765. If the court or judge is satisfied that the examination of the witness is necessary an order must be made that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on counsel for the opposing party within a specified time before that fixed for the examination. If the witness is a child ~~under thirteen (13) years of age~~ as defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes or

a vulnerable adult as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, the court can allow the witness to testify 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.

SECTION 7. This act shall become effective November 1, 2022.

Passed the House of Representatives the 21st day of February,
2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 26th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____