

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 2992

By: Bush

AS INTRODUCED

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.

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.

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

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

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

19 b. is unavailable as a witness as defined in Section 2804  
20 of Title 12 of the Oklahoma Statutes. When the child  
21 is unavailable, such statement may be admitted only if  
22 there is corroborative evidence of the act;

23 2. No attorney for any party is present when the statement is  
24 made. However, if appropriate facilities are utilized that allow

1 observation of the child without the child's knowledge or awareness  
2 in any way, any such attorney may be present as an observer, but not  
3 as a participant, and no such attorney shall have any right to  
4 intervene, object, or otherwise make his or her presence known to  
5 the child before, after, or during the making of the statement of  
6 the child;

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

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

12 5. The statement is not made in response to questioning  
13 calculated to lead the child to make a particular statement or is  
14 otherwise clearly shown to be the child's statement and not made  
15 solely as a result of a leading or suggestive question;

16 6. Every voice on the recording is identified;

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

20 8. Each party to the proceeding is afforded an opportunity to  
21 view the recording before the recording is offered into evidence;  
22 and  
23  
24

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

4        A statement may not be admitted under this subsection unless the  
5 proponent of the statement makes known to the parties an intention  
6 to offer the statement and the particulars of the statement at least  
7 ten (10) days in advance of the proceedings to provide the parties  
8 with an opportunity to prepare to answer the statement.

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

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

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

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

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

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

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

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

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

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

- 23            a. the recording is both visual and aural and is recorded  
24                on film or videotape or by other electronic means,

- 1           b. the recording equipment is capable of making an  
2           accurate recording, the operator of the equipment is  
3           competent, and the recording is accurate and has not  
4           been altered,  
5           c. every voice on the recording is identified, and  
6           d. each party to the proceeding is afforded an opportunity  
7           to view the recording before it is shown in the  
8           courtroom, and a copy of a written transcript  
9           transcribed by a licensed or certified court reporter  
10          is provided to the parties.

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

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

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

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

23          1. "Alternative method" means a method by which a child witness  
24 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:

1       Section 2611.12 A. It is the intent of the Oklahoma  
2 Legislature in enacting this section to recognize the special  
3 circumstances and needs of a child witness during criminal court  
4 proceedings, and to protect the child witness from any unnecessary  
5 emotional discomfort or anguish.

6       B. In any criminal proceeding, a child witness shall have the  
7 right to be accompanied by a support person while giving testimony  
8 in the proceeding, but the support person shall not discuss the  
9 testimony of the child witness with any other witnesses or attempt  
10 to prompt or influence the testimony of the child witness.

11       C. The child witness shall be afforded the opportunity, if  
12 available, to have a certified therapeutic dog accompanied by the  
13 handler of the certified therapeutic dog in lieu of a support  
14 person.

15       D. As used in this section:

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

24       a. the credentials of the certified therapeutic dog,



1           b.    the certified therapeutic dog is appropriately  
2               insured, and

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

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

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

13          SECTION 5.       AMENDATORY       12 O.S. 2021, Section 2615, is  
14 amended to read as follows:

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

19          1.    A party who is a natural person;

20          2.    An officer or employee of a party which is not a natural  
21 person designated as its representative by its attorney;

22          3.    A person whose presence is shown by a party to be essential  
23 to the presentation of the party's cause;  
24

1        4. A parent, other relative, or next friend of a child ~~twelve~~  
2 ~~(12) years of age or under~~ as defined by Section 1-1-105 of Title  
3 10A of the Oklahoma Statutes who is called to testify when the court  
4 deems it to be in the best interests of the child and the interests  
5 of justice; or

6        5. The victim of an alleged criminal offense or a  
7 representative, parent or other relative of said victim, in any  
8 criminal prosecution, upon the motion of the state to bar such  
9 exclusion, unless the court finds such exclusion to be in the  
10 interest of justice.

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

13        Section 765. If the court or judge is satisfied that the  
14 examination of the witness is necessary an order must be made that  
15 the witness be examined conditionally at a specified time and place,  
16 and that a copy of the order be served on counsel for the opposing  
17 party within a specified time before that fixed for the examination.  
18 If the witness is a child ~~under thirteen (13) years of age~~ as  
19 defined by Section 1-1-105 of Title 10A of the Oklahoma Statutes or  
20 a vulnerable adult as defined in Section 10-103 of Title 43A of the  
21 Oklahoma Statutes, the court can allow the witness to testify  
22 through an alternative method pursuant to the provisions of the  
23 Uniform Child Witness Testimony by Alternative Methods Act or  
24 Section 2611.2 of Title 12 of the Oklahoma Statutes.

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

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