

1 **SENATE FLOOR VERSION**

2 April 9, 2024

3 ENGROSSED HOUSE  
4 BILL NO. 3774

By: Duel of the House

and

Gollihare of the Senate

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7  
8 An Act relating to civil procedure; amending 12 O.S.  
9 2021, Section 2803.1, as amended by Section 1,  
10 Chapter 216, O.S.L. 2023 (12 O.S. Supp. 2023, Section  
11 2803.1), which relates to the admissibility of  
12 statements of children not having attained certain  
13 age or incapacitated persons; modifying statements  
14 that are admissible in juvenile deprived proceedings  
15 and pre-trial and post-trial criminal and juvenile  
16 delinquent proceedings; specifying types of abuse;  
17 providing governing law for notice and disclosure of  
18 statements; and providing an effective date.

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

20 SECTION 1. AMENDATORY 12 O.S. 2021, Section 2803.1, as  
21 amended by Section 1, Chapter 216, O.S.L. 2023 (12 O.S. Supp. 2023,  
22 Section 2803.1), is amended to read as follows:

23 Section 2803.1 A. The following statements are admissible in  
24 juvenile deprived proceedings and pre-trial and post-trial criminal  
and juvenile delinquent proceedings including preliminary hearings,  
prosecutive merit hearings, and hearings on the revocation of  
probation or acceleration of a deferred judgment:

1        1. A statement made by a child who has not attained sixteen  
2 (16) years of age at the time the statement is made, a child sixteen  
3 (16) years of age or older who has a disability, or a person who is  
4 an incapacitated person as defined by Section 10-103 of Title 43A of  
5 the Oklahoma Statutes, which describes any act of physical abuse,  
6 domestic abuse, neglect, enabling physical abuse or neglect against  
7 the child or incapacitated person or any act of sexual contact, any  
8 conduct proscribed by Sections 741, 745, 748, 843.1, 843.2, 843.3,  
9 843.4, 843.5, or 1111, 1111.1, 1112, 1113, 1114, 1115, 1116, 1117,  
10 1118, 1119, 1123, or 1125 of Title 21 of the Oklahoma Statutes,  
11 performed with or on the child or incapacitated person by another,  
12 ~~is admissible in criminal and juvenile proceedings in the courts in~~  
13 ~~this state if:~~

14        ~~1. The court finds, in a hearing conducted outside the presence~~  
15 ~~of the jury, that the time, content, and totality of circumstances~~  
16 ~~surrounding the taking of the statement provide sufficient indicia~~  
17 ~~of reliability to render the statement inherently trustworthy. In~~  
18 ~~determining such trustworthiness, the court may consider factors~~  
19 ~~including but not limited to:~~

- 20            a. ~~the spontaneity and consistent repetition of the~~  
21                ~~statement,~~
- 22            b. ~~the mental state of the declarant,~~
- 23            c. ~~whether the terminology used is unexpected of a child~~  
24                ~~of similar age or of an incapacitated person, and~~

1           ~~d. whether a lack of motive to fabricate exists; and~~  
2       ~~2. The child or incapacitated person either:~~  
3           ~~a. testifies or is available to testify at the~~  
4           ~~proceedings in open court or through an alternative~~  
5           ~~method pursuant to the provisions of the Uniform Child~~  
6           ~~Witness Testimony by Alternative Methods Act or~~  
7           ~~Section 2611.2 of this title, or~~  
8           ~~b. is unavailable as defined in Section 2804 of this~~  
9           ~~title as a witness. When the child or incapacitated~~  
10          ~~person is unavailable, the statement may be admitted~~  
11          ~~only if there is corroborative evidence of the act.~~

12       ~~B. A statement may not be admitted under this section unless~~  
13       ~~the proponent of the statement makes known to the adverse party an~~  
14       ~~intention to offer the statement and the particulars of the~~  
15       ~~statement at least ten (10) days in advance of the proceedings to~~  
16       ~~provide the adverse party with an opportunity to prepare to answer~~  
17       ~~the statement or any act or omission resulting in great bodily~~  
18       ~~injury to the child or incapacitated person;~~

19       2. A statement made by a child who has not attained sixteen  
20       (16) years of age at the time the statement is made, a child sixteen  
21       (16) years of age or older who has a disability, or a person who is  
22       an incapacitated person as defined by Section 10-103 of Title 43A of  
23       the Oklahoma Statutes, which describes any act of physical abuse,  
24       neglect, or enabling physical abuse or neglect against another child

1 or incapacitated person, any act of sexual contact with another  
2 child or incapacitated person, any conduct proscribed by Sections  
3 741, 745, 748, 843.1, 843.2, 843.3, 843.4, 843.5, or 1111, 1111.1,  
4 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1123, or 1125 of  
5 Title 21 of the Oklahoma Statutes, any act of domestic abuse, or any  
6 act or omission resulting in death or great bodily injury to a human  
7 being, provided that the child or incapacitated person witnessed the  
8 act or omission.

9 B. The following statements are admissible in criminal and  
10 juvenile delinquent trials if the child or incapacitated person  
11 testifies at the trial whether in person, via videoconferencing  
12 equipment, or other alternative means; if the child or incapacitated  
13 person does not testify at the trial and is unavailable as defined  
14 by subsection A of Section 2804 of this title and the requirements  
15 for admissibility pursuant to subsection B of Section 2804 of this  
16 title are satisfied; or if the child or incapacitated person does  
17 not testify at the trial and the court determines that the statement  
18 is nontestimonial:

19 1. A statement made by a child who has not attained sixteen  
20 (16) years of age at the time the statement is made, a child sixteen  
21 (16) years of age or older who has a disability, or a person who is  
22 an incapacitated person as defined by Section 10-103 of Title 43A of  
23 the Oklahoma Statutes, which describes any act of physical abuse,  
24 domestic abuse, neglect, enabling physical abuse or neglect against

1 the child or incapacitated person or any act of sexual contact, any  
2 conduct proscribed by Sections 741, 745, 748, 843.1, 843.2, 843.3,  
3 843.4, 843.5, or 1111, 1111.1, 1112, 1113, 1114, 1115, 1116, 1117,  
4 1118, 1119, 1123, or 1125 of Title 21 of the Oklahoma Statutes,  
5 performed with or on the child or incapacitated person by another,  
6 or any act or omission resulting in great bodily injury to the child  
7 or incapacitated person; and

8 2. A statement made by a child who has not attained sixteen  
9 (16) years of age at the time the statement is made, a child sixteen  
10 (16) years of age or older who has a disability, or a person who is  
11 an incapacitated person as defined by Section 10-103 of Title 43A of  
12 the Oklahoma Statutes, which describes any act of physical abuse,  
13 neglect, or enabling physical abuse or neglect against another child  
14 or incapacitated person, any act of sexual conduct with another  
15 child or incapacitated person, any conduct proscribed by Sections  
16 741, 745, 748, 843.1, 843.2, 843.3, 843.4, 843.5, or 1111, 1111.1,  
17 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1123, or 1125 of  
18 Title 21 of the Oklahoma Statutes, any act of domestic abuse, or any  
19 act or omission resulting in death or great bodily injury to a human  
20 being, provided that the child or incapacitated person witnessed the  
21 act or omission.

22 C. The provisions of the Oklahoma Criminal Discovery Code,  
23 Section 2002 of Title 22 of the Oklahoma Statutes, shall govern the  
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1 disclosure and notice requirements of statements offered pursuant to  
2 this section.

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

7 SECTION 2. This act shall become effective November 1, 2024.

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
9 April 9, 2024 - DO PASS  
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