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February 7, 2023

By: Howard

An Act relating to hearsay; amending 12 O.S. 2021, Section 2803.1, which relates to statements of children or incapacitated persons; increasing age for which certain child testimony is admissible; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2021, Section 2803.1, is amended to read as follows:

Section 2803.1. A. A statement made by a child who has not attained ~~thirteen (13)~~ sixteen (16) years of age at the time the statement is made, a child ~~thirteen (13)~~ sixteen (16) years of age or older who has a disability, or a person who is an incapacitated person as ~~such term is~~ defined by ~~the provisions of~~ Section 10-103 of Title 43A of the Oklahoma Statutes, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or on the child or incapacitated person by another, is admissible in criminal and juvenile proceedings in the courts in this state if:

1 1. The court finds, in a hearing conducted outside the presence
2 of the jury, that the time, content, and totality of circumstances
3 surrounding the taking of the statement provide sufficient indicia
4 of reliability ~~so as to render it~~ the statement inherently
5 trustworthy. In determining such trustworthiness, the court may
6 consider, ~~among other things, the following~~ factors including but
7 not limited to:

8 a. the spontaneity and consistent repetition of the
9 statement,

10 b. the mental state of the declarant,

11 c. whether the terminology used is unexpected of a child
12 of similar age or of an incapacitated person, and

13 d. whether a lack of motive to fabricate exists; and

14 2. The child or incapacitated person either:

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

20 b. is unavailable as defined in Section 2804 of this
21 title as a witness. When the child or incapacitated
22 person is unavailable, ~~such~~ the statement may be
23 admitted only if there is corroborative evidence of
24 the act.

1 B. A statement may not be admitted under this section unless
2 the proponent of the statement makes known to the adverse party an
3 intention to offer the statement and the particulars of the
4 statement at least ten (10) days in advance of the proceedings to
5 provide the adverse party with an opportunity to prepare to answer
6 the statement.

7 C. As used in this section, "disability" means a physical or
8 mental impairment which substantially limits one or more of the
9 major life activities of the child or the child is regarded as
10 having such an impairment by a competent medical professional.

11 SECTION 2. This act shall become effective November 1, 2023.

12 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
13 February 7, 2023 - DO PASS
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