

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

SENATE BILL 223

By: Griffin

AS INTRODUCED

An Act relating to hearsay; amending 12 O.S. 2011, Section 2803.1, as amended by Section 1, Chapter 42, O.S.L. 2013 (12 O.S. Supp. 2016, Section 2803.1), which relates to statements of children or incapacitated persons; allowing admissibility of certain statements under specified circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 2803.1, as amended by Section 1, Chapter 42, O.S.L. 2013 (12 O.S. Supp. 2016, 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) years of age, a child thirteen (13) 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 neglect, any act of physical abuse against ~~the~~ a child or incapacitated person or any act of sexual contact performed with or

1 on ~~the~~ a child or incapacitated person by another, is admissible in
2 criminal and juvenile proceedings in the courts in this state if:

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

13 2. The child or incapacitated person either:

- 14 a. testifies or is available to testify at the
15 proceedings in open court or through an alternative
16 method pursuant to the provisions of the Uniform Child
17 Witness Testimony by Alternative Methods Act or
18 Section 2611.2 of this title, or
19 b. is unavailable as defined in Section 2804 of this
20 title as a witness. When the child or incapacitated
21 person is unavailable, such statement may be admitted
22 only if there is corroborative evidence of the act.

23 B. A statement may not be admitted under this section unless
24 the proponent of the statement makes known to the adverse party an

1 intention to offer the statement and the particulars of the
2 statement at least ten (10) days in advance of the proceedings to
3 provide the adverse party with an opportunity to prepare to answer
4 the statement.

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

9 SECTION 2. This act shall become effective November 1, 2017.

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