

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2189

By: Brewer of the House

and

Boren of the Senate

7 [civil procedure - authorizing hearing to determine
8 alternative method of providing testimony -
9 effective date]

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13 AMENDMENT NO. 1. Page 1, restore the title

14 Passed the Senate the 16th day of April, 2019.

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Presiding Officer of the Senate

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18 Passed the House of Representatives the ____ day of _____,

19 2019.

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Presiding Officer of the House
of Representatives

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

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 2616 of Title 12, unless there
15 is created a duplication in numbering, reads as follows:

16 A. The judge or presiding officer in a criminal proceeding may
17 order a hearing to determine whether to allow a domestic abuse
18 witness to testify by an alternative method. The judge or presiding
19 officer, for good cause shown, shall order the hearing upon motion
20 of a party or a domestic abuse witness.

21 B. A hearing to determine whether to allow a domestic abuse
22 witness to testify by an alternative method shall be conducted on
23 the record after reasonable notice to all parties, any nonparty
24 movant and any other person the presiding officer specifies. The

1 presence of the domestic abuse witness is not required at the
2 hearing unless ordered by the judge or presiding officer. In
3 conducting the hearing, the judge or presiding officer shall not be
4 bound by rules of evidence except the rules of privilege.

5 C. The judge or presiding officer may allow a domestic abuse
6 witness to testify by an alternative method only in the following
7 situations:

8 1. The domestic abuse witness may testify otherwise than in an
9 open forum in the presence and full view of the finder of fact if
10 the judge or presiding officer finds by clear and convincing
11 evidence that the person would suffer serious emotional trauma that
12 would substantially impair the ability of the person to communicate
13 with the finder of fact if required to testify in the open forum;
14 and

15 2. The domestic abuse witness may testify other than face-to-
16 face with the defendant if the judge or presiding officer finds by
17 clear and convincing evidence that the person would suffer serious
18 emotional trauma that would substantially impair the ability of the
19 person to communicate with the finder of fact if required to be
20 confronted face-to-face by the defendant.

21 D. The domestic abuse witness shall have the right to be
22 accompanied by a support person while giving testimony in the
23 proceeding, but the support person shall not discuss the testimony
24 of the domestic abuse witness with any other witnesses or attempt to

1 prompt or influence the testimony of the domestic abuse witness.
2 The domestic abuse witness may have an advocate appointed by the
3 court to monitor the potential for emotional trauma. The advocate
4 shall be a licensed professional social worker, counselor,
5 psychologist or psychiatrist.

6 E. If the judge or presiding officer determines that a standard
7 under subsection C of this section has been met, the judge or
8 presiding officer shall determine whether to allow the domestic
9 abuse witness to testify by an alternative method and in doing so
10 shall consider:

- 11 1. Alternative methods reasonably available;
- 12 2. Available means for protecting the interests of or reducing
13 emotional trauma to the person without resort to an alternative
14 method;
- 15 3. The nature of the case;
- 16 4. The relative rights of the parties;
- 17 5. The importance of the proposed testimony of the person;
- 18 6. The nature and degree of emotional trauma that the person
19 may suffer if an alternative method is not used; and
- 20 7. Any other relevant factor.

21 F. An order allowing or disallowing a domestic abuse witness to
22 testify by an alternative method shall state the findings of fact
23 and conclusions of law that support the determination of the judge
24 or presiding officer.

1 G. An order allowing a domestic abuse witness to testify by an
2 alternative method shall:

- 3 1. State the method by which the person is to testify;
- 4 2. List any individual or category of individuals allowed to be
5 in, or required to be excluded from, the presence of the person
6 during the testimony;
- 7 3. State any special conditions necessary to facilitate a
8 party's right to examine or cross-examine the person;
- 9 4. State any condition or limitation upon the participation of
10 individuals present during the testimony of the person; and
- 11 5. State any other condition necessary for taking or presenting
12 the testimony.

13 H. The alternative method ordered by the judge or presiding
14 officer shall not be more restrictive of the rights of the parties
15 than is necessary under the circumstance to serve the purposes of
16 the order.

17 I. An alternative method ordered by the judge or presiding
18 officer shall permit a full and fair opportunity for examination or
19 cross-examination of the domestic abuse witness by each party.

20 J. As used in this section, "alternative method" means a method
21 by which a domestic abuse witness testifies which does not include
22 any of the following:

- 23 1. Having the person testify in person in an open forum;

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2. Having the person testify in the presence and full view of the finder of fact and presiding officer; and

3. Allowing all of the parties to be present, to participate and to view and be viewed by the person.

SECTION 2. This act shall become effective November 1, 2019.

Passed the House of Representatives the 13th day of March, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the ___ day of _____, 2019.

Presiding Officer of the Senate