

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 233

By: Hicks

4  
5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Children's Code;  
8 amending 10A O.S. 2011, Section 1-4-505, which  
9 relates to admissibility of prerecorded statements of  
10 child; modifying availability of certain method of  
11 child witness testimony; and providing an effective  
12 date.

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

13 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-4-505, is  
14 amended to read as follows:

15 Section 1-4-505. A. This section shall apply only to a  
16 proceeding brought within the purview of the Oklahoma Children's  
17 Code in which a child ~~twelve (12) years of age or younger~~ is alleged  
18 to be deprived, and shall apply only to the statement of that child  
19 or another child witness.

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

22 1. The court determines in a hearing conducted outside the  
23 presence of the jury that the time, content and totality of  
24 circumstances surrounding the taking of the statement provide

1 sufficient indicia of reliability so as to render it inherently  
2 trustworthy. In determining trustworthiness, the court may  
3 consider, among other things, the following factors: the spontaneity  
4 and consistent repetition of the statement, the mental state of the  
5 declarant, whether the terminology used is unexpected of a child of  
6 similar age or of an incapacitated person, and whether a lack of  
7 motive to fabricate exists; and the child either:

- 8 a. testifies or is available to testify at the  
9 proceedings in open court or through an alternative  
10 method pursuant to the provisions of the Uniform Child  
11 Witness Testimony by Alternative Methods Act or  
12 Section 2611.2 of Title 12 of the Oklahoma Statutes,  
13 or
- 14 b. is unavailable as a witness as defined in Section 2804  
15 of Title 12 of the Oklahoma Statutes. When the child  
16 is unavailable, such statement may be admitted only if  
17 there is corroborative evidence of the act;

18 2. No attorney for any party is present when the statement is  
19 made. However, if appropriate facilities are utilized that allow  
20 observation of the child without the child's knowledge or awareness  
21 in any way, any such attorney may be present as an observer, but not  
22 as a participant, and no such attorney shall have any right to  
23 intervene, object, or otherwise make his or her presence known to  
24

1 the child before, after, or during the making of the statement of  
2 the child;

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

5 4. The recording equipment is capable of making an accurate  
6 recording, the operator of the equipment is competent, and the  
7 recording is accurate and has not been altered;

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

12 6. Every voice on the recording is identified;

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

16 8. Each party to the proceeding is afforded an opportunity to  
17 view the recording before the recording is offered into evidence;  
18 and

19 9. A copy of a written transcript of the recording transcribed  
20 by a licensed or certified court reporter is available to the  
21 parties.

22 A statement may not be admitted under this subsection unless the  
23 proponent of the statement makes known to the parties an intention  
24 to offer the statement and the particulars of the statement at least

1 ten (10) days in advance of the proceedings to provide the parties  
2 with an opportunity to prepare to answer the statement.

3 SECTION 2. This act shall become effective November 1, 2021.  
4

5 58-1-483 TEK 1/4/2021 12:16:24 PM  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25