

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 57th Legislature (2019)

4   HOUSE BILL 2189

                                  By: Brewer

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7                                   AS INTRODUCED

8           An Act relating to civil procedure; authorizing  
9           hearing to determine alternative method of providing  
10          testimony; stating requirements for determination  
11          hearing; providing standards for determination;  
12          providing factors for determination; authorizing use  
13          of support persons or advocates; providing  
14          requirements for order allowing or disallowing  
15          testimony by alternative method; providing right of  
16          parties to examine or cross-examine domestic abuse  
17          witness; defining term; providing for codification;  
18          and providing an effective date.

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

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

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

1 B. A hearing to determine whether to allow a domestic abuse  
2 witness to testify by an alternative method shall be conducted on  
3 the record after reasonable notice to all parties, any nonparty  
4 movant and any other person the presiding officer specifies. The  
5 presence of the domestic abuse witness is not required at the  
6 hearing unless ordered by the judge or presiding officer. In  
7 conducting the hearing, the judge or presiding officer shall not be  
8 bound by rules of evidence except the rules of privilege.

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

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

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

1 D. The domestic abuse witness shall have the right to be  
2 accompanied by a support person while giving testimony in the  
3 proceeding, but the support person shall not discuss the testimony  
4 of the domestic abuse witness with any other witnesses or attempt to  
5 prompt or influence the testimony of the domestic abuse witness.  
6 The domestic abuse witness may have an advocate appointed by the  
7 court to monitor the potential for emotional trauma. The advocate  
8 shall be a licensed professional social worker, counselor,  
9 psychologist or psychiatrist.

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

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

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

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

7 1. State the method by which the person is to testify;

8 2. List any individual or category of individuals allowed to be  
9 in, or required to be excluded from, the presence of the person  
10 during the testimony;

11 3. State any special conditions necessary to facilitate a  
12 party's right to examine or cross-examine the person;

13 4. State any condition or limitation upon the participation of  
14 individuals present during the testimony of the person; and

15 5. State any other condition necessary for taking or presenting  
16 the testimony.

17 H. The alternative method ordered by the judge or presiding  
18 officer shall not be more restrictive of the rights of the parties  
19 than is necessary under the circumstance to serve the purposes of  
20 the order.

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

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

- 4 1. Having the person testify in person in an open forum;
- 5 2. Having the person testify in the presence and full view of  
6 the finder of act and presiding officer; and
- 7 3. Allowing all of the parties to be present, to participate  
8 and to view and be viewed by the person.

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

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11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2019 - DO  
12 PASS.

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