

1 **SENATE FLOOR VERSION**

2 April 2, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2189

6 By: Brewer of the House

7 and

8 Boren of the Senate

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

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

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

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

22 B. A hearing to determine whether to allow a domestic abuse
23 witness to testify by an alternative method shall be conducted on
24 the record after reasonable notice to all parties, any nonparty

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

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

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

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

22 D. The domestic abuse witness shall have the right to be
23 accompanied by a support person while giving testimony in the
24 proceeding, but the support person shall not discuss the testimony

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

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

12 1. Alternative methods reasonably available;

13 2. Available means for protecting the interests of or reducing
14 emotional trauma to the person without resort to an alternative
15 method;

16 3. The nature of the case;

17 4. The relative rights of the parties;

18 5. The importance of the proposed testimony of the person;

19 6. The nature and degree of emotional trauma that the person
20 may suffer if an alternative method is not used; and

21 7. Any other relevant factor.

22 F. An order allowing or disallowing a domestic abuse witness to
23 testify by an alternative method shall state the findings of fact
24

1 and conclusions of law that support the determination of the judge
2 or presiding officer.

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

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

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

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

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

13 5. State any other condition necessary for taking or presenting
14 the testimony.

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

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

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

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

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 April 2, 2019 - DO PASS AS AMENDED

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