

**TO AMEND THE CHOCTAW NATION OF OKLAHOMA CIVIL PROCEDURE CODE**

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**IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION**

**RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL**

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**A COUNCIL BILL**

**TO AMEND** the Choctaw Nation of Oklahoma Civil Procedure Code by: amending Section 2611.4, which relates to the definition of a child witness and removes references to the state of Oklahoma; amending section 2611.7, which relates to situations where alternative methods of testimony are permitted for children; amending section 2611.8, which relates to the court's determination to allow child witnesses to testify by alternative methods; amending section 2615, which relates to the exclusion of certain witnesses in court; amending section 2803.1, which relates to the admissibility of statements made by a child or an incapacitated person; increasing the age requirements; and amending section 2804, which relates to the hearsay statements of unavailable witnesses.

**WHEREAS**, in accordance with Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma, the Tribal Council (the "Council") shall enact legislation, rules, and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

**WHEREAS**, the Nation, as a sovereign nation, possesses the right to set forth rules of evidence for admission of evidence in the Courts of the Choctaw Nation, and to define the procedures to be followed in its courts; and

**WHEREAS**, the Council finds it is in the best interest of the Nation to adopt the proposed amendments to the Choctaw Nation Code of Civil Procedure as listed below, to bring the Nation's rules of evidence in conformity with the federal and state rules of evidence. This bill also removes erroneous references to the State of Oklahoma and replacing them with references to the Choctaw Nation of Oklahoma.

**THEREFORE BE IT ENACTED** by the Tribal Council of the Choctaw Nation of Oklahoma:

**SECTION 1. AMENDATORY** The Choctaw Nation of Oklahoma Civil Procedure Code, Section 2611.4. Definitions, is amended to read as follows:

Section 2611.4. Definitions.

As used in the Uniform Child Witness Testimony by Alternative Methods Act:

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1. "Alternative method" means a method by which a child witness testifies which does not include all of the following:

- a. having the child testify in person in an open forum,
- b. having the child testify in the presence and full view of the finder of fact and presiding officer, and
- c. allowing all of the parties to be present, to participate, and to view and be viewed by the child;

2. "Child witness" means ~~an individual under thirteen (13) years of age who has been or will be called to testify~~ child as defined by Section 1-1-105 of the Choctaw Nation Children's Code who has been or will be called to testify in a proceeding in a proceeding;

3. "Criminal proceeding" means a deposition, conditional examination, trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state the Choctaw Nation, a juvenile certified to stand trial as an adult, or a juvenile prosecuted as an adult; and

4. "Noncriminal proceeding" means a deposition, trial or hearing before a court or an administrative agency having judicial or quasi-judicial powers, other than a criminal proceeding.

SECTION 2. The Choctaw Nation of Oklahoma Civil Procedure Code, Section 2611.7, is amended to read as follows:

Section 2611.7. Situations where alternative method testimony permitted.

A. In a criminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method ~~only in the following situations: if the judge or presiding officer finds by a preponderance of the evidence that the child is unable to testify in open court in the presence of the defendant for any of the following reasons:~~

1. ~~The child may testify otherwise than in an open forum in the presence and full view of the finder of fact if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum~~ The child is unable to testify because of fear.

2. ~~The child may testify other than face-to-face with the defendant if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.~~ There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

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3. The child suffers a mental or other infirmity.
4. Conduct by defendant or defense counsel causes the child to be unable to continue testifying.
5. The ability of the child to communicate with the finder of fact is otherwise substantially impaired by any other significant and relevant factor.

B. In a criminal proceeding, the child may have an advocate appointed by the court to monitor the potential for emotional trauma. The advocate shall be a registered professional social worker, psychologist, or psychiatrist.

C. In a noncriminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method if the judge or presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making the finding, the judge or presiding officer shall consider:

1. The nature of the proceeding;
2. The age and maturity of the child;
3. The relationship of the child to the parties in the proceeding;
4. The nature and degree of emotional trauma that the child may suffer in testifying; and
5. Any other relevant factor.

SECTION 3. AMENDATORY. Section 2611.8 of the Choctaw Nation Code of Oklahoma Civil Procedure Code is amended to read as follows:

Section 2611.8. Determination of whether to allow child witness to testify by an alternative method.

A. If the judge or presiding officer determines that ~~a standard under Section 5 of this act has been~~ the proper standard to allow a child witness to testify by an alternative method has been met, the judge or presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

1. Alternative methods reasonably available;

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2. Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

SECTION 4. AMENDATORY The Choctaw Nation of Oklahoma Civil Procedure Code, Section 2615 is amended to read as follows:

Section 2615. Exclusion of Witnesses.

A. At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The court may make the order of its own motion. This rule does not authorize exclusion of:

1. A party who is a natural person;
2. An officer or employee of a party which is not a natural person designated as its representative by its attorney;
3. A person whose presence is shown by a party to be essential to the presentation of the party's cause;
4. A parent, other relative, or next friend of a child ~~twelve (12) years of age or under who is called to testify~~ as defined by Section 1-1-105 of the Choctaw Nation Children's Code who is called to testify when the court deems it to be in the best interests of the child and the interests of justice; or
5. The victim of an alleged criminal offense or a representative, parent or other relative of said victim, in any criminal prosecution, upon the motion of the state Choctaw Nation of Oklahoma to ~~bar~~ remove such exclusion, unless the court finds such exclusion to be in the interest of justice.

SECTION 5. AMENDATORY. The Choctaw Nation of Oklahoma Civil Procedure Code, Section 2803.1 is amended to read as follows:

Section 2803.1. Admissibility of Statements of children not having attained 13 years Children or incapacitated persons describing acts of physical abuse or sexual contact—Admissibility in criminal and juvenile proceedings.

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A. A statement made by a child who has not attained ~~thirteen (13)~~ sixteen (16) years of age, ~~a child sixteen (16) 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 2611.2(B)(2) of this title, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or on the child or incapacitated person by another, is admissible in criminal and juvenile proceedings if:

1. The court finds that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability ~~so as to render it~~ the statement inherently trustworthy. In determining such trustworthiness, the court may consider, ~~among other things, the following factors, including but not limited to:~~

- a. the spontaneity and consistent repetition of the statement,
- b. the mental state of the declarant,
- c. whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and
- d. whether a lack of motive to fabricate exists; and

2. The child or incapacitated person either:

- a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of ~~the or~~ Section ~~2611.2~~ 2611.3 et seq. of this title, or
- b. is unavailable as defined in Section 2804 of this title as a witness. When the child or incapacitated person is unavailable, ~~such~~ the statement may be admitted only if there is corroborative evidence of the act.

B. A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the adverse party with an opportunity to prepare to answer the statement.

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

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SECTION 6. AMENDATORY The Choctaw Nation of Oklahoma Civil Procedure Code, **Section 2804 is amended to read as follows:**

Section 2804. Hearsay Exception; Declarant Unavailable.

A. "Unavailability as a witness," as used in this section, includes the situation in which the declarant:

1. Is exempt by ruling of the court on the ground of privilege from testifying concerning the subject matter or of the declarant's statement;
2. Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
3. Testifies to a lack of memory of the subject matter of the declarant's statement;
4. Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
5. Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance or, in the case of a hearsay exception under paragraphs 2, 3, ~~or 4,~~ or 5 of subsection B of this section, the declarant's attendance or testimony, by process or other reasonable means.

A declarant is not unavailable as a witness if the declarant's exemption, refusal, claim of lack of memory, inability or absence is due to an act by the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

B. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

1. Testimony given as a witness at another hearing of the same or another proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest had an opportunity and similar motive to develop the testimony by direct, cross or redirect examination;
2. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant's impending death;

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3. A statement which was at the time of its making contrary to the declarant's pecuniary or proprietary interest, or which tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, and which a reasonable person in the declarant's position would not have made unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a codefendant or other individual implicating both the codefendant or other individual and the accused, is not within this exception; ~~and~~

4. A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, relationship to another person or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or statement concerning the foregoing matters or death of another person, if the declarant was related to that person by blood, adoption or marriage or was so intimately associated with the person's family as to be likely to have accurate information concerning the matter declared; and

5. A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing the declarant's unavailability as a witness, and did so intending that result.

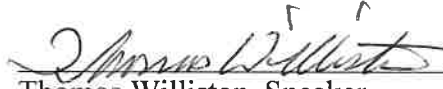
SECTION 7. This Council Bill shall become effective immediately.


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CERTIFICATION

*I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve (12) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council in Tuskahoma, Oklahoma on July, 8, 2023. I further certify that the foregoing Council Bill CB- 89 -23 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes, and zero (0) abstaining.*

  
Thomas Williston, Speaker  
Choctaw Nation Tribal Council

  
Ronald Perry, Secretary  
Choctaw Nation Tribal Council

  
Gary Patton, Chief  
Choctaw Nation of Oklahoma

Date 7.12.2023



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**Purpose/Need of Council Bill:** This bill amends the Choctaw Nation of Oklahoma Civil Procedure Code by: amending Section 2611.4, which relates to the definition of a child witness and removes references to the state of Oklahoma; amending section 2611.7, which relates to situations where alternative methods of testimony are permitted for children; amending section 2611.8, which relates to the court's determination to allow child witnesses to testify by alternative methods; amending section 2615, which relates to the exclusion of certain witnesses in court; amending section 2803.1, which relates to the admissibility of statements made by a child or an incapacitated person; increases the age requirements; and amending section 2804, which relates to the hearsay statements of unavailable witnesses.

**Title of Council Bill:** TO AMEND THE CHOCTAW NATION OF OKLAHOMA CODE OF CIVIL PROCEDURE

**Agency:** Legal & Compliance

**Budget:** N/A

**Match Required:** N/A

**Request by Project Director:** Brian Danker, SEO, Legal & Compliance