

Oklahoma Evidence Code

General Index

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"Article" groups of statutes are bookmarked as shown below. All statutes have individual bookmarks. Click on a topical article to move to the next article, or click on "back 1" when present to move to a prior article or prior statute, as appropriate.

General provisions

Judicial notice

Presumptions

Relevancy

Privileges

Witnesses

Opinions & Expert Testimony

Hearsay

Authentication & Identification

Writings, Recordings & Photographs

Miscellaneous

ARTICLE 1 - GENERAL PROVISIONS [back 1](#)

§2101. Short Title [back 1](#)

This act shall be known and may be as the Oklahoma Evidence Code.

Historical data: Laws 1978, c. 285, §101, eff. Oct. 1, 1978

Cases citing this section:

Helm v. State Election Bd., 1979 OK 4, 589 P.2d 224

1984 OK 4, 678 P.2d 253, *Gabus v. Harvey*

Braden v. Hendricks, 1985 OK 14, 695 P.2d 1343

Woods v. Fruehauf Trailer Corp., 1988 OK 105, 765 P.2d 770

Bostick Tank Truck Service v. Nix, 1988 OK 128, 764 P.2d 1344

Panama Processes, S.A. v. Cities Service Co., 1990 OK 66, 796 P.2d 276

O'Neal by and through O'Neal v. Joy Dependent School Dist., No. 1, Murray County, 1991 OK 118, 820 P.2d 1334

Three M Investments, Inc. v. Ahrend Co., 1992 OK 33, 827 P.2d 1324

State ex rel OBA v. Smolen, 1992 OK 116, 837 P.2d 894

Smicklas v. Spitz, 1992 OK 145, 846 P.2d 362

Crussel v. Kirk, 1995 OK 41, 894 P.2d 1116

Sharp v. 251st Street Landfill, Inc., 1996 OK 109, 925 P.2d 546

1995 OK AG 78, Question by: M. Hughes, Executive Director, Ethics Commission

Lubbock Production Credit Ass'n v. Hubble, 1979 OK CIV APP 43, 599 P.2d 434

Waddle v. Waddle, 1994 OK CIV APP 1, 868 P.2d 751

Matter of S.A.D., 1981 OK CR 18, 625 P.2d 114

Driskell v. State, 1983 OK CR 22, 659 P.2d 343

Beavers v. State, 1985 OK CR 146, 709 P.2d 702

Drake v. State, 1988 OK CR 180, 761 P.2d 879

McDonald v. State, 1988 OK CR 245, 764 P.2d 202

Hill v. State, 1988 OK CR 251, 764 P.2d 210

Mills v. Tulsa County District Court, 1989 OK CR 2, 770 P.2d 900

Peninger v. State, 1991 OK CR 60, 811 P.2d 609

Luna v. State, 1992 OK CR 26, 829 P.2d 69

Nickell v. State, 1994 OK CR 73, 885 P.2d 670

Omalsa v. State, 1995 OK CR 80, 911 P.2d 286
Ledbetter v. State, 1997 OK CR 5, 933 P.2d 880

§2102. Legislative Purpose [back 1](#)

This Code shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Historical data: Laws 1978, c. 285, §102, eff. Oct. 1, 1978

Cases citing this section:

Callison v. Callison, 1984 OK 7, 687 P.2d 106
Three M Investments, Inc. v. Ahrend Co., 1992 OK 33, 827 P.2d 1324
Omalsa v. State, 1995 OK CR 80, 911 P.2d 286
Dodd v. State, 2000 OK CR 2, 993 P.2d 778

§2103. Scope of Rules [back 1](#)

A. Except as otherwise provided in subsection B of this section, this Code shall apply in both criminal and civil proceedings, conducted by or under the supervision of a court, in which evidence is produced.

B. The rules set forth in this Code, except those that relate to privileges, do not apply in the following situations:

1. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the judge under subsection A of [Section 2105](#) of this title; and
2. Proceedings for extradition or rendition; sentencing or granting or revoking probation; advancement of deferred sentencing; issuance of warrants for arrest, criminal summonses and search warrants; proceedings with respect to release on bail or otherwise; and juvenile emergency show-cause hearings.

Historical data: Amended by Laws 1986, c. 240, §1, eff. Nov. 1, 1986.

Cases citing this section:

Tansy v. Dacommed Corp., 1994 OK 146, 890 P.2d 881
Thompson v. State, 1980 OK CR 95, 620 P.2d 422
Wade v. State, 1981 OK CR 14, 624 P.2d 86
Lee v. State, 1983 OK CR 41, 661 P.2d 1345
Castro v. State, 1987 OK CR 182, 745 P.2d 394
Gilbert v. State, 1988 OK CR 283, 765 P.2d 807
Hunter v. State, 1992 OK CR 1, 825 P.2d 1353
Omalsa v. State, 1995 OK CR 80, 911 P.2d 286
Ledbetter v. State, 1997 OK CR 5, 933 P.2d 880

§2104. Rulings on Evidence [back 1](#)

A. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected, and:

1. If the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
2. If the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked.

B. The court may add any statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. It may direct the making of an offer in question and answer form.

C. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being presented to the jury by any means, including making statements or offers of proof or asking questions within the hearing of the jury.

D. Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

Historical data: Laws 1978, c. 285, §104, eff. Oct. 1, 1978; Laws 1986, c. 240, §1, eff. Nov. 1, 1986.

Cases citing this section:

Walker v. St. Louis-san Francisco Ry. Co., 1982 OK 25, 646 P.2d 593
Matter of Adoption of C.M.G., 1982 OK 156, 656 P.2d 262
Faulkenberry v. Kansas City Southern Ry. Co., 1983 OK 26, 661 P.2d 510

Nail by and Through Nail v. Oklahoma Children's Memorial Hosp., 1985 OK 101, 710 P.2d 755
Howard v. T.G. & Y. Stores, Inc., 1986 OK 45, 725 P.2d 1262
Woods v. Fruehauf Trailer Corp., 1988 OK 105, 765 P.2d 770
Gaines v. Sun Refinery and Marketing, 1990 OK 33, 790 P.2d 1073
Doyle v. Kelly, 1990 OK 119, 801 P.2d 717
O'Neal v. Joy Dependent School Dist., No. 1, Murray County, 1991 OK 118, 820 P.2d 1334
Davis v. B.F. Goodrich, 1992 OK 14, 826 P.2d 587
Lacy v. Schlumberger Well Service, 1992 OK 54, 839 P.2d 157
Juvenal v. Okeene Public Schools, 1994 OK 83, 878 P.2d 1026
Kahre v. Kahre, 1995 OK 133, 916 P.2d 1355
Sullivan v. Forty Second West, 1998 OK 48, 961 P.2d 801
Zehner v. Post Oak Oil Co., 1981 OK CIV APP 44, 640 P.2d 991
Barnes v. Gaines, 1983 OK CIV APP 13, 668 P.2d 1175
Independent School Dist. No. 4 of Rogers County v. Energy Conservation Engineering, Inc., 1987 OK CIV APP 37, 745 P.2d 1200
Roye Realty & Developing, Inc. v. Watson, 1990 OK CIV APP 21, 791 P.2d 821
Weyerhaeuser Co. v. Washington, 1992 OK CIV APP 111, 838 P.2d 539
Scribner v. Hillcrest Medical Center, 1992 OK CIV APP 117, 866 P.2d 437
Smith v. Smith, 1993 OK CIV APP 17, 847 P.2d 827
Bond v. Bond, 1996 OK CIV APP 3, 916 P.2d 272
Statewide Funding Corp. v. Reed, 1996 OK CIV APP 110, 925 P.2d 578
Rucker v. mid Century Insurance Co., 1997 OK CIV APP 47, 945 P.2d 507
Delozier v. Axle, 1999 OK CIV APP 54, 982 P.2d 1096
Malson v. Palmer Broadcasting Group, 2001 OK CIV APP 10, 18 P.3d 359
King v. Neal, 2001 OK CIV APP 11, 19 P.3d 899
In re Guardianship of H.D.B., 2001 OK CIV APP 147, 38 P.3d 252
In re Adoption of M.C.D., 2002 OK CIV APP 27
Pearson v. State, 1981 OK CR 83, 632 P.2d 765
Cole v. State, 1981 OK CR 118, 634 P.2d 1313
Ferguson v. State, 1982 OK CR 64, 645 P.2d 1021
Stevenson v. State, 1982 OK CR 82, 647 P.2d 437
Bennett v. State, 1982 OK CR 161, 652 P.2d 1237
Orgill v. State, 1983 OK CR 33, 660 P.2d 649
Pekah v. State, 1983 OK CR 34, 660 P.2d 652
Holmes v. State, 1983 OK CR 78, 664 P.2d 1063
Hill v. State, 1983 OK CR 161, 672 P.2d 308
Dutton v. State, 1984 OK CR 12, 674 P.2d 1134
Master v. State, 1985 OK CR 76, 702 P.2d 375
Kreijanovsky v. State, 1985 OK CR 120, 706 P.2d 541
Ross v. State, 1986 OK CR 49, 717 P.2d 117
Lopez v. State, 1986 OK CR 63, 718 P.2d 369
Avey v. State, 1986 OK CR 120, 723 P.2d 989
Sealy v. State, 1986 OK CR 141, 738 P.2d 521
Banks v. State, 1986 OK CR 166, 728 P.2d 497
Diaz v. State, 1986 OK CR 167, 728 P.2d 503
Reid v. State, 1987 OK CR 34, 733 P.2d 1355
Lasater v. State, 1987 OK CR 46, 734 P.2d 317
Vanscoy v. State, 1987 OK CR 50, 734 P.2d 825
Patterson v. State, 1987 OK CR 59, 735 P.2d 338
Williams v. State, 1987 OK CR 77, 736 P.2d 536
Wolfe v. State, 1987 OK CR 80, 736 P.2d 546
Silver v. State, 1987 OK CR 99, 737 P.2d 1221
Scales v. State, 1987 OK CR 100, 737 P.2d 950
Thomas v. State, 1987 OK CR 113, 741 P.2d 482
Hainey v. State, 1987 OK CR 120, 740 P.2d 146
Robinson v. State, 1987 OK CR 195, 743 P.2d 1088

Kelsey v. State, 1987 OK CR 206, 744 P.2d 190
Stringfellow v. State, 1987 OK CR 233, 744 P.2d 1277
Mann v. State, 1988 OK CR 7, 749 P.2d 1151
Ellis v. State, 1988 OK CR 9, 749 P.2d 114
J.a.m. v. State, 1988 OK CR 10, 749 P.2d 116
Simmons v. State, 1988 OK CR 13, 748 P.2d 996
Collins v. State, 1988 OK CR 33, 751 P.2d 200
Van White v. State, 1988 OK CR 47, 752 P.2d 814
Rojem v. State, 1988 OK CR 57, 753 P.2d 359
Brown v. State, 1988 OK CR 59, 753 P.2d 908
Gates v. State, 1988 OK CR 77, 754 P.2d 882
Stewart v. State, 1988 OK CR 108, 757 P.2d 388
Wilson v. State, 1988 OK CR 111, 756 P.2d 1240
Mason v. State, 1988 OK CR 113, 756 P.2d 612
Munson v. State, 1988 OK CR 124, 758 P.2d 324
Highsaw v. State, 1988 OK CR 128, 758 P.2d 336
New v. State, 1988 OK CR 165, 760 P.2d 833
Salyer v. State, 1988 OK CR 184, 761 P.2d 890
Hawkins v. State, 1988 OK CR 207, 761 P.2d 918
Dunham v. State, 1988 OK CR 211, 762 P.2d 969
Woods v. State, 1988 OK CR 222, 762 P.2d 987
Grant v. State, 1988 OK CR 254, 764 P.2d 214
McBrain v. State, 1988 OK CR 261, 764 P.2d 905
Jones v. State, 1989 OK CR 7, 772 P.2d 922
Harris v. State, 1989 OK CR 34, 777 P.2d 1359
Rowe v. State, 1989 OK CR 54, 779 P.2d 594
Hyatt v. State, 1989 OK CR 56, 779 P.2d 993
J.J.J. v. State, 1989 OK CR 77, 782 P.2d 944
Moore v. State, 1990 OK CR 5, 788 P.2d 387
Battenfield v. State, 1991 OK CR 82, 816 P.2d 555
Boyd v. State, 1992 OK CR 40, 839 P.2d 1363
Bechtel v. State, 1992 OK CR 55, 840 P.2d 1
Simpson v. State, 1994 OK CR 40, 876 P.2d 690
Bartell v. State, 1994 OK CR 59, 881 P.2d 92
Flores v. State, 1995 OK CR 9, 896 P.2d 558
Valdez v. State, 1995 OK CR 18, 900 P.2d 363
Salazar v. State, 1998 OK CR 70, 973 P.2d 315
Dodd v. State, 2000 OK CR 2, 993 P.2d 778
Stemple v. State, 2000 OK CR 4, 994 P.2d 61
Powell v. State, 2000 OK CR 5, 995 P.2d 510
Hammon v. State, 2000 OK CR 7, 999 P.2d 1082
Abshier v. State, 2001 OK CR 13, 28 P.3d 579

[§2105. Preliminary Questions](#) [back 1](#)

A. Preliminary questions concerning the qualifications of a person to be a witness, the existence of a privilege or the admissibility of evidence shall be determined by the court, subject to the provisions of subsection B of this section.

B. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

C. Hearings on the admissibility of confessions shall be conducted in all cases out of the hearing of the jury. Hearings on other preliminary matters shall also be conducted out of the hearing of the jury when the interests of justice require or when requested by an accused who is a witness.

D. The accused does not subject himself to cross-examination on other issues in the case by testifying upon a preliminary matter. E. This section does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Historical data: Laws 1978, c. 285, §105, eff. Oct. 1, 1978

Cases citing this section:

Gabus v. Harvey, 1984 OK 4, 678 P.2d 253

Long v. State, 1982 OK CR 185, 654 P.2d 647

Lee v. State, 1983 OK CR 41, 661 P.2d 1345

Champeau v. State, 1984 OK CR 54, 678 P.2d 1192

Laske v. State, 1985 OK CR 7, 694 P.2d 536

Durant v. State, 1986 OK CR 61, 717 P.2d 1161

McLeod v. State, 1986 OK CR 140, 725 P.2d 877

Fixico v. State, 1987 OK CR 64, 735 P.2d 580

New v. State, 1988 OK CR 165, 760 P.2d 833

McClellan v. State, 1988 OK CR 208, 762 P.2d 281

Davis v. State, 1990 OK CR 20, 792 P.2d 76

Harjo v. State, 1990 OK CR 53, 797 P.2d 338

Pennington v. State, 1995 OK CR 79, 913 P.2d 1356

§2106. Limited Admissibility [back 1](#)

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court shall upon request restrict the evidence to its proper scope and instruct the jury accordingly.

Historical data: Laws 1978, c. 285, §106, eff. Oct. 1, 1978

Cases citing this section:

Cleere v. United Parcel Service, Inc., 1983 OK CIV APP 29, 669 P.2d 785

Pearson v. State, 1981 OK CR 83, 632 P.2d 765

Rounds v. State, 1984 OK CR 49, 679 P.2d 283

Freeman v. State, 1986 OK CR 107, 721 P.2d 1327

Funkhouser v. State, 1987 OK CR 44, 734 P.2d 815

Jones v. State, 1989 OK CR 7, 772 P.2d 922

Davis v. State, 1996 OK CR 15, 916 P.2d 251

§2107. Remainder of Related Writings or Recorded Statements [back 1](#)

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which should in fairness be considered contemporaneously with it.

Historical data: Laws 1978, c. 285, §107, eff. Oct. 1, 1978

Cases citing this section:

Davis v. State, 1994 OK CR 72, 885 P.2d 665

ARTICLE 2 - JUDICIAL NOTICE [back 1](#)

§2201. Judicial Notice of Law [back 1](#)

A. Judicial notice shall be taken by the court of the common law, constitutions and public statutes in force in every state, territory and jurisdiction of the United States.

B. Judicial notice may be taken by the court of:

1. Private acts and resolutions of the Congress of the United States and of the Legislature of this state, and duly enacted ordinances and duly published regulations of governmental subdivisions or agencies of this state or the United States; and

2. The laws of foreign countries.

C. The determination by judicial notice of the applicability and the tenor of any matter of common law, constitutional law or of any statute, private act, resolution, ordinance or regulation shall be a matter for the judge and not for the jury.

Historical data: Laws 1978, c. 285, §201, eff. Oct. 1, 1978

Cases citing this section:

Enterprise Management Consultants, Inc. v. State ex Rel. Oklahoma Tax Com'n, 1988 OK 91, 768 P.2d 359

State ex rel OBA v. Lobaugh, 1988 OK 144, 781 P.2d 806

Panama Processes, S.A. v. Cities Service Co., 1990 OK 66, 796 P.2d 276
Sisson by and through Allen v. Elkins, 1990 OK 123, 801 P.2d 722
Davis v. B.F. Goodrich, 1992 OK 14, 826 P.2d 587
State ex rel OBA v. Smolen, 1992 OK 116, 837 P.2d 894
In re Initiative Petition No. 349, State Question No. 642, 1992 OK 122, 838 P.2d 1
Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority, 1994 OK 20, 896 P.2d 503
Cornog v. Mashburn, 1995 OK 80, 901 P.2d 824
Keating v. Johnson, 1996 OK 61, 918 P.2d 51
Rowland v. City of Tulsa, 1999 OK 75, 988 P.2d 1282
Davis v. GHS Health Maintenance Organization, Inc., 2001 OK 3, 22 P.3d 1204
Barker v. State Ins. Fund, 2001 OK 94
Browning v. State ex Rel. Dept. Of Public Safety, 1991 OK CIV APP 19, 812 P.2d 1372
Wilson v. State, 1987 OK CR 91, 737 P.2d 578
McKay v. City of Tulsa, 1988 OK CR 238, 763 P.2d 703
Berget v. State, 1991 OK CR 121, 824 P.2d 364
Hill v. State, 1995 OK CR 28, 898 P.2d 155

§2202. Judicial Notice of Adjudicative Facts [back 1](#)

- A. This section governs only judicial notice of adjudicative facts.
- B. A judicially noticed adjudicative fact shall not be subject to reasonable dispute. It shall be either:
 - 1. Generally known within the territorial jurisdiction of the trial court; or
 - 2. Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- C. A court may take judicial notice, whether requested or not.
- D. A court shall take judicial notice if requested by a party and supplied with the necessary information.
- E. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Historical data: Laws 1978, c. 285, §202, eff. Oct. 1, 1978

Cases citing this section:

Perry v. Meek, 1980 OK 151, 618 P.2d 934
Callison v. Callison, 1984 OK 7, 687 P.2d 106
Woods Development Co. v. Meurer Abstract & Title Co., 1985 OK 106, 712 P.2d 30
Reeves v. Agee, 1989 OK 25, 769 P.2d 745
Fields v. A & B Electronics, 1990 OK 7, 788 P.2d 940
Practical Products Corp. v. Brightmire, 1992 OK 158, 864 P.2d 330
Oklahoma Indigent Defense System v. Hopper, 1993 OK 161, 867 P.2d 1256
Browning v. State ex Rel. Dept. Of Public Safety, 1991 OK CIV APP 19, 812 P.2d 1372
Walkey v. Triad Drilling Co., 1995 OK CIV APP 131, 911 P.2d 1222
Walker v. Reynolds, 1996 OK CIV APP 2, 912 P.2d 899
Cooper v. Board of County Com'rs of Grady County, 1996 OK CIV APP 85, 921 P.2d 376

§2203. Determining Propriety of Taking Judicial Notice [back 1](#)

- A. In determining the propriety of taking judicial notice of a matter:
 - 1. The court may consult and use any source of pertinent information, whether or not furnished by a party; and
 - 2. No exclusionary rule except a valid claim of privilege shall apply.
- B. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the scope of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- C. Judicial notice may be taken at any stage of the proceeding.

Historical data: Laws 1978, c. 285, §203, eff. Oct. 1, 1978

Cases citing this section:

Sooner Federal Sav. And Loan Ass'n v. Mobley, 1981 OK 124, 645 P.2d 1000
Callison v. Callison, 1984 OK 7, 687 P.2d 106
Woods Development Co. v. Meurer Abstract & Title Co., 1985 OK 106, 712 P.2d 30

Panama Processes, S.a. v. Cities Service Co., 1990 OK 66, 796 P.2d 276
State ex rel OBA v. Smolen, 1992 OK 116, 837 P.2d 894
Browning v. State ex Rel. Dept. Of Public Safety, 1991 OK CIV APP 19, 812 P.2d 1372

ARTICLE 3 - PRESUMPTIONS [back 1](#)

§2301. Definitions [back 1](#)

1. A "presumption" is a rule of procedure which means that when a basic fact exists the existence of another fact must be assumed, whether or not the basic fact has any probative value of the existence of the assumed fact;
2. "Basic fact" means the fact or group of facts giving rise to a presumption;
3. "Presumed fact" means the fact which must be assumed; and
4. "Inconsistent presumptions" means the presumed fact of one presumption is inconsistent with the presumed fact of another presumption.

Historical data: Laws 1978, c. 285, §301, eff. Oct. 1, 1978

Cases citing this section:

Hawkins v. Oklahoma County Court Clerks Office, 2001 OK CIV APP 83, 26 P.3d 124

§2302. Establishment of Basic Fact [back 1](#)

The basic fact of a presumption may be established in an action by the pleadings, or by stipulation of the parties, or by judicial notice, or by evidence.

Historical data: Laws 1978, c. 285, §302, eff. Oct. 1, 1978

Cases citing this section: None Found.

§2303. Effect of Presumptions in Civil Cases [back 1](#)

Except when otherwise provided by law, when the basic fact of a presumption has been established as provided in [Section 302](#) of this Code:

1. If the basic fact has any probative value of the existence of the presumed fact, the presumed fact shall be assumed to exist and the burden of persuading the trier of fact of the nonexistence of the presumed fact rests on the party against whom the presumption operates; or
2. If the basic fact does not have any probative value of the existence of the presumed fact, the presumed fact is disregarded when the party against whom the presumption operates introduces evidence which would support a finding of the nonexistence of the presumed fact and the existence of the fact otherwise presumed is then determined from the evidence in the same manner as if no presumption had been operable in the case.

Historical data: Laws 1978, c. 285, §303, eff. Oct. 1, 1978

Cases citing this section:

Young v. First State Bank, Watonga, 1981 OK 53, 628 P.2d 707

Little v. Arbuckle Memorial Hosp. Bd. Of Control, 1983 OK CIV APP 28, 665 P.2d 1227

Hawkins v. Oklahoma County Court Clerks Office, 2001 OK CIV APP 83, 26 P.3d 124

§2304. Presumptions in Criminal Cases [back 1](#)

A. Except as otherwise provided by law, presumptions against an accused, in a criminal case, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this Code.

B. The court shall not direct the jury to find a presumed fact against the accused. The court may only submit the question of the existence of the presumed fact to the jury, if a reasonable juror considering the evidence as a whole, including the evidence of the basic facts, could find the presumed fact beyond a reasonable doubt.

C. Whenever the existence of a presumed fact against the accused establishes guilt or is an element of the offense or negatives a defense and is submitted to the jury, the judge shall give an instruction explaining that the jury may regard the basic facts as sufficient evidence of the presumed fact but is not required to do so. Where the presumed fact establishes guilt, is an element of the offense or negatives a defense, the judge also shall instruct the jury that its existence must be proved beyond a reasonable doubt.

Historical data: Laws 1978, c. 285, §304, eff. Oct. 1, 1978

Cases citing this section:

Hall v. State, 1981 OK CR 123, 635 P.2d 618
Wofford v. State, 1982 OK CR 83, 646 P.2d 1300
Henager v. State, 1986 OK CR 20, 716 P.2d 669
Hunter v. State, 1987 OK CR 165, 740 P.2d 1206
Smith v. State, 1993 OK CR 50, 863 P.2d 465
Knighton v. State, 1996 OK CR 2, 912 P.2d 878
Patton v. State, 1998 OK CR 66, 973 P.2d 270

§2305. Inconsistent Presumptions [back 1](#)

If two conflicting presumptions arise the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance both presumptions shall be disregarded.

Historical data: Laws 1978, c. 285, §305, eff. Oct. 1, 1978

Cases citing this section:

Ellison v. Ellison, 1996 OK 64, 919 P.2d 1

ARTICLE 4 - RELEVANCY [back 1](#)

§2401. Definition of [back 1](#)

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Historical data: Laws 1978, c. 285, §401, eff. Oct. 1, 1978

Cases citing this section:

James v. State Farm Mut. Auto. Ins. Co., 1991 OK 37, 810 P.2d 365
Matter of Termination of Parental Rights, 1993 OK 10, 847 P.2d 768
Beshara v. Southern Nat. Bank., 1996 OK 90, 928 P.2d 280
Little v. Arbuckle Memorial Hosp. Bd. of Control, 1983 OK CIV APP 28, 665 P.2d 1227
Witt v. Martin, 1983 OK CIV APP 33, 672 P.2d 312
Birdsell v. Birdsell, 1983 OK CIV APP 41, 671 P.2d 80
Breed v. Federal Moving & Storage, Inc., 1992 OK CIV APP 173, 844 P.2d 893
Smith v. Smith, 1993 OK CIV APP 17, 847 P.2d 827
Nalley v. Kellwood Co., 1993 OK CIV APP 80, 867 P.2d 1336
Selfridge v. State, 1980 OK CR 71, 617 P.2d 237
Cole v. State, 1981 OK CR 118, 634 P.2d 1313
Daugherty v. State, 1982 OK CR 10, 640 P.2d 558
Johnson v. State, 1982 OK CR 37, 665 P.2d 815
Vaughan v. State, 1983 OK CR 10, 657 P.2d 657
Black v. State, 1983 OK CR 60, 663 P.2d 22
Fields v. State, 1983 OK CR 106, 666 P.2d 1301
Terry v. State, 1983 OK CR 107, 666 P.2d 1305
Stafford v. State, 1983 OK CR 131, 669 P.2d 285
Ashlock v. State, 1983 OK CR 134, 669 P.2d 308
Howe v. State, 1983 OK CR 137, 669 P.2d 780
Webb v. State, 1984 OK CR 76, 684 P.2d 1208
Yell v. State, 1985 OK CR 3, 694 P.2d 946
Littlejohn v. State, 1986 OK CR 8, 713 P.2d 22
Farley v. State, 1986 OK CR 42, 717 P.2d 111
Lucero v. State, 1986 OK CR 54, 717 P.2d 605
Vanwoundenberg v. State, 1986 OK CR 81, 720 P.2d 328
Fabian v. State, 1986 OK CR 95, 720 P.2d 1276
Casady v. State, 1986 OK CR 114, 721 P.2d 1342
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§2402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible [back 1](#)

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Oklahoma, by statute or by this Code. Evidence which is not relevant is not admissible.

Historical data: Laws 1978, c. 285, §402, eff. Oct. 1, 1978

Cases citing this section:

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Matter of McConnel, 1994 OK 107, 886 P.2d 471
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Phillips v. State, 1999 OK CR 38, 989 P.2d 1017
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§2403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Cumulative Nature of Evidence [back 1](#)

Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise.

Historical data: Laws 1978, c. 285, §403, eff. Oct. 1, 1978

Cases citing this section:

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§2404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes [back 1](#)

A. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

1. Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same;

2. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

3. Evidence of the character of a witness, as provided in Sections [2607](#), [2608](#) and [2609](#) of this Code.

B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Historical data: Laws 1978, c. 285, §405, eff. Oct. 1, 1978; Laws 1991, c. 62, §1, eff. Sept. 1, 1991..

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Strubhart v. Perry Memorial Hosp. Trust Authority, 1995 OK 10, 903 P.2d 263

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Duvall v. State, 1991 OK CR 64, 825 P.2d 621
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Luna v. State, 1991 OK CR 86, 815 P.2d 1197

Rowland v. State, 1991 OK CR 94, 817 P.2d 263
Lafevers v. State, 1991 OK CR 97, 819 P.2d 1362
White v. State, ex Rel. Hopper, 1991 OK CR 118, 821 P.2d 378
Camron v. State, 1992 OK CR 17, 829 P.2d 47
Bechtel v. State, 1992 OK CR 55, 840 P.2d 1
Blakely v. State, 1992 OK CR 70, 841 P.2d 1156
Walker v. State, 1992 OK CR 73, 841 P.2d 1159
Elmore v. State, 1993 OK CR 1, 846 P.2d 1120
Salazar v. State, 1993 OK CR 21, 852 P.2d 729
Allen v. State, 1993 OK CR 49, 862 P.2d 487
Paxton v. State, 1993 OK CR 59, 867 P.2d 1309
Wilson v. State, 1994 OK CR 5, 871 P.2d 46
Brown v. State, 1994 OK CR 12, 871 P.2d 56
Allen v. State, 1994 OK CR 13, 871 P.2d 79
Lalli v. State, 1994 OK CR 15, 870 P.2d 175
Dennis v. State, 1994 OK CR 34, 879 P.2d 1227
Malone v. State, 1994 OK CR 43, 876 P.2d 707
Sattayarak v. State, 1994 OK CR 64, 887 P.2d 1326
Lambert v. State, 1994 OK CR 79, 888 P.2d 494
Bowie v. State, 1995 OK CR 4, 906 P.2d 759
Hammon v. State, 1995 OK CR 33, 898 P.2d 1287
Jones v. State, 1995 OK CR 34, 899 P.2d 635
Martinez v. State, 1995 OK CR 52, 904 P.2d 138
Cheney v. State, 1995 OK CR 72, 909 P.2d 74
Pennington v. State, 1995 OK CR 79, 913 P.2d 1356
Knighton v. State, 1996 OK CR 2, 912 P.2d 878
Parker v. State, 1996 OK CR 19, 917 P.2d 980
Conover v. State, 1997 OK CR 6, 933 P.2d 904
Bryan v. State, 1997 OK CR 15, 935 P.2d 338
Cohee v. State, 1997 OK CR 30, 942 P.2d 211
Spunaugle v. State, 1997 OK CR 47, 946 P.2d 246
Hooper v. State, 1997 OK CR 64, 947 P.2d 1090
Slaughter v. State, 1997 OK CR 78, 950 P.2d 839
Douglas v. State, 1997 OK CR 79, 951 P.2d 651
Wood v. State, 1998 OK CR 19, 959 P.2d 1
Lewis v. State, 1998 OK CR 24, 970 P.2d 1158
Jackson v. State, 1998 OK CR 39, 964 P.2d 875
State v. Gaytan, 1998 OK CR 71, 972 P.2d 356
Huskey v. State, 1999 OK CR 3, 989 P.2d 1
Short v. State, 1999 OK CR 15, 980 P.2d 1081
Martinez v. State, 1999 OK CR 33, 984 P.2d 813
Mooney v. State, 1999 OK CR 34, 990 P.2d 875
Anderson v. State, 1999 OK CR 44, 992 P.2d 409
Powell v. State, 2000 OK CR 5, 995 P.2d 510
Welch v. State, 2000 OK CR 8, 2 P.3d 356
Gilson v. State, 2000 OK CR 14, 8 P.3d 883
Pickens v. State, 2001 OK CR 3, 19 P.3d 866
Abshier v. State, 2001 OK CR 13, 28 P.3d 579
Cipriano v. State, 2001 OK CR 25, 32 P.3d 869

[§2405. Methods of Proving Character back 1](#)

A. Where evidence of a person's character or trait of character is admissible, proof may be by testimony as to reputation or by testimony in the form of opinion. Inquiry is allowable on cross-examination into relevant specific instances of conduct.

B. In cases in which a person's character or a trait of character is an essential element of a charge, claim or defense, proof may be made of specific instances of his conduct.

Historical data: Laws 1978, c. 285, §405, eff. Oct. 1, 1978

Cases citing this section:

Boomershine v. State, 1981 OK CR 120, 634 P.2d 1318

Kennedy v. State, 1982 OK CR 11, 640 P.2d 971

Wilkett v. State, 1984 OK CR 16, 674 P.2d 573

Brodhent v. State, 1985 OK CR 63, 700 P.2d 1021

Reynolds v. State, 1986 OK CR 56, 717 P.2d 608

Starr v. State, 1986 OK CR 84, 720 P.2d 339

Thompson v. State, 1986 OK CR 130, 724 P.2d 780

Thomas v. State, 1987 OK CR 113, 741 P.2d 482

Mann v. State, 1988 OK CR 7, 749 P.2d 1151

Phillips v. State, 1988 OK CR 103, 756 P.2d 604

Thomason v. State, 1988 OK CR 249, 763 P.2d 1182

Harris v. State, 1989 OK CR 34, 777 P.2d 1359

Crumley v. State, 1991 OK CR 72, 815 P.2d 676

Martinez v. State, 1995 OK CR 52, 904 P.2d 138

Douglas v. State, 1997 OK CR 79, 951 P.2d 651

§2406. Habit; Routine Practice [back 1](#)

Evidence of a person's habit or of an organization's routine practice, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Historical data: Laws 1978, c. 285, §406, eff. Oct. 1, 1978

Cases citing this section: None found

§2407. Subsequent Remedial Measures [back 1](#)

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Historical data: Laws 1978, c. 285, §407, eff. Oct. 1, 1978; Laws 1991, c. 62, §2, eff. Sept. 1, 1991

Cases citing this section:

Juvenal v. Okeene Public Schools, 1994 OK 83, 878 P.2d 1026

Corbell v. State ex Rel. Dept. Of Transp., 1993 OK CIV APP 45, 856 P.2d 575

§2408. Compromise and Offers to Compromise [back 1](#)

Evidence of:

1. Furnishing, offering or promising to furnish; or
2. Accepting, offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for the claim, invalidity of the claim or the amount of the claim.

Evidence of conduct or statements made in compromise negotiations is not admissible. This section does not require the exclusion of discoverable evidence merely because it is revealed in the course of compromise negotiations. This section does not require exclusion of evidence when it is offered for another purpose, including proof of bias or prejudice of a witness, negating a contention of undue delay, or proof of an effort to obstruct a criminal investigation or prosecution.

Historical data: Laws 1978, c. 285 §408, eff. Oct. 1, 1978

Cases citing this section:

James v. State Farm Mut. Auto. Ins. Co., 1991 OK 37, 810 P.2d 365

Cleere v. United Parcel Service, Inc., 1983 OK CIV APP 29, 669 P.2d 785

Martinez v. Moffat, 1994 OK CIV APP 133, 890 P.2d 988

F.d.i.c. v. Moore, 1995 OK CIV APP 88, 898 P.2d 1329

Mayes v. State, 1994 OK CR 44, 887 P.2d 1288

§2409. Payment of Medical and Similar Expenses [back 1](#)

Evidence of furnishing, offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Historical data: Laws 1978, c. 285, §409, eff. Oct. 1, 1978

Cases citing this section:

Handy v. City of Lawton, 1992 OK 111, 835 P.2d 870

§2410. Offer to Plead Guilty; Nolo Contendere; Withdrawn Plea of Guilty [back 1](#)

A. Except as otherwise provided in this section evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;
3. any statement made in the course of any proceedings under state procedure regarding either of the foregoing pleas; or
4. any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

B. However, such a statement is admissible in:

1. any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement, as a matter of justice, should be considered contemporaneously with it; or
2. a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Historical data: Laws 1978, c. 285, §410, eff. Oct. 1, 1978; Laws 1991, c. 62, §3, eff. Sept. 1, 1991

Cases citing this section:

Matter of McConnel, 1994 OK 107, 886 P.2d 471

Security Nat. Bank of Sapulpa v. Hufford, 1987 OK CIV APP 92, 754 P.2d 561

Irwin v. Swo Acquisition Corp., 1992 OK CIV APP 48, 830 P.2d 587

Delong v. State of Oklahoma, 1998 OK CIV APP 32, 956 P.2d 937

Shriver v. State, 1980 OK CR 36, 632 P.2d 420

Blackwell v. State, 1983 OK CR 51, 663 P.2d 12

Gillum v. State, 1984 OK CR 61, 681 P.2d 87

Adams v. State, 1986 OK CR 80, 719 P.2d 843

Mansel v. State, 1991 OK CR 12, 805 P.2d 677

Banks v. State, 1991 OK CR 51, 810 P.2d 1286

Fritz v. State, 1991 OK CR 62, 811 P.2d 1353

Mayes v. State, 1994 OK CR 44, 887 P.2d 1288

Hill v. State, 1995 OK CR 28, 898 P.2d 155

§2411. Liability Insurance [back 1](#)

Evidence of the existence of liability insurance is not admissible upon the issue of negligence or wrongful action. This section does not require the exclusion of evidence of liability insurance where the question of possession of liability insurance is itself an element of the action, or when offered for another purpose, including proof of agency, ownership, control, bias or prejudice of a witness.

Historical data: Laws 1978, c. 285, §411, eff. Oct. 1, 1978

Cases citing this section:

Handy v. City of Lawton, 1992 OK 111, 835 P.2d 870

Beshara v. Southern Nat. Bank., 1996 OK 90, 928 P.2d 280

Shuman v. Laverne Farmers Co-op., 1991 OK CIV APP 2, 809 P.2d 76

§2412. Sexual offense against another person - Evidence of complaining witness' previous sexual conduct inadmissible - Exception [back 1](#)

A. In a criminal case in which a person is accused of a sexual offense against another person, the following is not admissible:

1. Evidence of reputation or opinion regarding other sexual behavior of a victim or the sexual offense alleged.
2. Evidence of specific instances of sexual behavior of an alleged victim with persons other than the

accused offered on the issue of whether the alleged victim consented to the sexual behavior with respect to the sexual offense alleged.

B. The provisions of subsection A of this section do not require the exclusion of evidence of:

1. Specific instances of sexual behavior if offered for a purpose other than the issue of consent, including proof of the source of semen, pregnancy, disease or injury;

2. False allegations of sexual offenses; or

3. Similar sexual acts in the presence of the accused with persons other than the accused which occurs at the time of the event giving rise to the sexual offense alleged.

C. 1. If the defendant intends to offer evidence described in subsection B of this section, the defendant shall file a written motion to offer such evidence accompanied by an offer of proof not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties by counsel for the defendant and on the alleged victim by the district attorney.

2. If the court determines that the motion and offer of proof described in paragraph 1 of this subsection contains evidence described in subsection B of this section, the court may order an in-camera hearing to determine whether the proffered evidence is admissible under subsection B of this section.

Historical data: Added by Laws 1975, c. 19, §1. Renumbered from Section 750 of Title 22 by Laws 1992, c. 168, §1, eff. Sept. 1, 1992; amended by Laws 1993, c. 197, §1, eff. Sept. 1, 1993

Cases citing this section:

Mitchell v. State, 1994 OK CR 70, 884 P.2d 1186

ARTICLE 5 - PRIVILEGES [back 1](#)

§2501. Privileges Recognized Only as Provided [back 1](#)

Except as otherwise provided by constitution, statute or rules promulgated by the Supreme Court no person has a privilege to:

1. Refuse to be a witness;

2. Refuse to disclose any matter;

3. Refuse to produce any object or writing; or

4. Prevent another from being a witness or disclosing any matter or producing any object or writing.

Historical data: Laws 1978, c. 285, §501, eff. Oct. 1, 1978

Cases citing this section:

Jackson v. State, 1998 OK CR 39, 964 P.2d 875

§2502. Attorney-Client Privilege [back 1](#)

A. As used in this section:

1. An "attorney" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation;

2. A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who consults an attorney with a view towards obtaining legal services or is rendered professional legal services by an attorney;

3. A "representative of an attorney" is one employed by the attorney to assist the attorney in the rendition of professional legal services;

4. A "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client; and

5. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

1. Between himself or his representative and his attorney or his attorney's representative;

2. Between his attorney and the attorney's representative;

3. By him or his representative or his attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein;

4. Between representatives of the client or between the client and a representative of the client; or

5. Among attorneys and their representatives representing the same client.

C. The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no privilege under this rule:

1. If the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

3. As to a communication relevant to an issue of breach of duty by the attorney to his client or by the client to his attorney;

4. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness;

5. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between or among any of the clients; or

6. As to a communication between a public officer or agency and its attorney unless the communication concerns a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

Historical data: Laws 1978, c. 285, §502, eff. Oct. 1, 1978

Cases citing this section:

State ex Rel. Cartwright v. Oklahoma Industries Authority, 1981 OK 47, 629 P.2d 1244

Matter of Guardianship of Walling, 1986 OK 50, 727 P.2d 586

Thompson v. Box, 1994 OK CIV APP 183, 889 P.2d 1282

Kingfisher v. Oklahoma, 1998 OK CIV APP 39, 958 P.2d 170

Naum v. State, 1981 OK CR 76, 630 P.2d 785

Keller v. State, 1982 OK CR 159, 651 P.2d 1339

Cooper v. State, 1983 OK CR 42, 661 P.2d 905

Cooper v. State, 1983 OK CR 154, 671 P.2d 1168

Lively v. Washington County Dist. Court, 1987 OK CR 266, 747 P.2d 320

Douglas v. State, 1997 OK CR 79, 951 P.2d 651

Van White v. State, 1999 OK CR 10, 990 P.2d 253

Gilson v. State, 2000 OK CR 14, 8 P.3d 883

§2503. Physician and Psychotherapist-Patient Privilege [back 1](#)

A. As used in this section:

1. A "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist;

2. A "physician" is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized;

3. A "psychotherapist" is:

a. a person authorized to practice medicine in any state or nation, or reasonably believed by the patient to be so authorized, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

b. a person licensed or certified as a psychologist under the laws of any state or nation, or reasonably believed by the patient to be so licensed or certified, while similarly engaged; and

4. A communication is "confidential" if not intended to be disclosed to third persons, except persons present to further the interest of the patient in the consultation, examination or interview, persons reasonably necessary for the transmission of the communication, or persons who are participating in the

diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

B. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional condition, including alcohol or drug addiction, among himself, his physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

C. The privilege may be claimed by the patient, his guardian or conservator or the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

D. The following shall be exceptions to a claim of privilege:

1. There is no privilege under this section for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;

2. Communications made in the course of a court ordered examination of the physical, mental or emotional condition of a patient, whether a party or a witness, are not privileged under this section when they relate to the particular purpose for which the examination is ordered unless the court orders otherwise; or

3. The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of his claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense, is qualified to the extent that an adverse party in said proceeding may obtain relevant information regarding said condition by statutory discovery.

Historical data: Laws 1978, c. 285, §503, eff. Oct. 1, 1978; Laws 1980, c. 113, §1, eff. Oct. 1, 1980

Cases citing this section:

Johnson v. District Court of Oklahoma County, 1987 OK 47, 738 P.2d 151

Bryson v. Tillinghast, 1988 OK 6, 749 P.2d 110

Higginbotham v. Jackson, 1994 OK 8, 869 P.2d 319

Nitzel v. Jackson, 1994 OK 49, 879 P.2d 1222

Ellison v. Ellison, 1996 OK 64, 919 P.2d 1

Myers v. Lashley, 2002 OK 14,

1987 OK AG 81, Question by: Robert S. Schlottman, Ph.D., State Board of Examiners of Psychologists , State Board of Examiners of Psychologists

2001 OK AG 25, Question by: The Honorable Dick Wilkerson, State Senator, District No. 13

Newell v. Nash, 1994 OK CIV APP 143, 889 P.2d 345

Bryson v. State, 1985 OK CR 107, 711 P.2d 932

Snow v. State, 1987 OK CR 228, 744 P.2d 980

Berry v. State, 1988 OK CR 83, 753 P.2d 926

Mills v. Tulsa County District Court, 1989 OK CR 2, 770 P.2d 900

Peninger v. State, 1991 OK CR 60, 811 P.2d 609

Walker v. State, 1994 OK CR 66, 887 P.2d 301

Cheney v. State, 1995 OK CR 72, 909 P.2d 74

Omalza v. State, 1995 OK CR 80, 911 P.2d 286

Hooper v. State, 1997 OK CR 64, 947 P.2d 1090

[§2504. Husband-Wife Privilege back 1](#)

A. A communication is confidential for purposes of this section if it is made privately by any person to his spouse and is not intended for disclosure to any other person.

B. An accused in a criminal proceeding has a privilege to prevent his spouse from testifying as to any confidential communication between the accused and the spouse.

C. The privilege may be claimed by the accused or by the spouse on behalf of the accused. The authority of the spouse to do so is presumed.

D. There is no privilege under this section in a proceeding in which one spouse is charged with a crime against the person or property of:

1. The other;
2. A child of either;

3. A person residing in the household of either; or

4. A third person when the crime is committed in the course of committing a crime against any other person named in this section.

Historical data: Laws 1978, c. 285, §504, eff. Oct. 1, 1978

Cases citing this section:

Lavicky v. State, 1981 OK CR 87, 632 P.2d 1234

Taylor v. State, 1982 OK CR 8, 640 P.2d 554

Faulkner v. State, 1982 OK CR 84, 646 P.2d 1304

Stafford v. State, 1983 OK CR 86, 665 P.2d 1205

Coleman v. State, 1983 OK CR 101, 668 P.2d 1126

Stafford v. State, 1983 OK CR 131, 669 P.2d 285

Watkins v. State, 1985 OK CR 79, 702 P.2d 1045

Wilson v. State, 1987 OK CR 86, 737 P.2d 1197

Blake v. State, 1988 OK CR 272, 765 P.2d 1224

Johnson v. State, 1995 OK CR 62, 911 P.2d 918

Anderson v. State, 1999 OK CR 44, 992 P.2d 409

Wackerly v. State, 2000 OK CR 15, 12 P.3d 1

§2505. Religious Privilege [back 1](#)

A. As used in this section:

1. A "clergyman" is a minister, priest, rabbi, accredited christian science practitioner or other similar functionary of a religious organization, or any individual reasonably believed to be a clergyman by the person consulting him; and

2. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent another from disclosing his confidential communication made to a clergyman acting in his professional capacity.

C. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman is presumed to have authority to claim the privilege but only on behalf of the communicant.

Historical data: Laws 1978, c. 285, §505, eff. Oct. 1, 1978

Cases citing this section:

Masquat v. Maguire, 1981 OK 137, 638 P.2d 1105

Naum v. State, 1981 OK CR 76, 630 P.2d 785

§2506. Newsman's Privilege [back 1](#)

A. As used in this section:

1. "State proceeding" includes any proceeding or investigation before or by any judicial, legislative, executive or administrative body in this state;

2. "Medium of communication" includes any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system;

3. "Information" includes any written, oral or pictorial news or other material;

4. "Published information" means any information disseminated to the public by the person from whom disclosure is sought;

5. "Unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated;

6. "Processing" includes compiling, storing and editing of information; and

7. "Newsman" means any man or woman who is a reporter, photographer, editor, commentator, journalist, correspondent, announcer, or other individual regularly engaged in obtaining, writing, reviewing, editing, or otherwise preparing news for any newspaper, periodical, press association, newspaper syndicate, wire service, radio or television station, or other news service. Any individual employed by any such news service in the performance of any of the above-mentioned activities shall be deemed to be

regularly engaged in such activities. However, "newsman" shall not include any governmental entity or individual employed thereby engaged in official governmental information activities.

B. No newsman shall be required to disclose in a state proceeding either:

1. The source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

2. Any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public; unless the court finds that the party seeking the information or identity has established by clear and convincing evidence that such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternate means.

This subsection does not apply with respect to the content or source of allegedly defamatory information, in a civil action for defamation wherein the defendant asserts a defense based on the content or source of such information.

Historical data: Laws 1978, c. 285, §506, eff. Oct. 1, 1978

Cases citing this section:

Taylor v. Miskovsky, 1981 OK 143, 640 P.2d 959

§2506.1. Terms defined [back 1](#)

A. As used in this section:

1. An "interpreter" is an interpreter for the deaf who is an interpreter certified by an association or board recognized by the Office of Services to the Deaf, Rehabilitative Services Division of the Department of Human Services;

2. A "deaf person" is a person whose preferred mode of communication is by other than auditory means; and

3. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent an interpreter from disclosing such person's confidential communication made while such interpreter is acting in the capacity as an interpreter for persons who are deaf.

C. The privilege may be claimed by the interpreter, by the deaf person, by the deaf person's guardian or conservator, or by the deaf person's personal representative if the deaf person is deceased.

D. An interpreter who is employed to interpret, transliterate or relay a conversation between a person who can hear and a deaf person is a conduit for the conversation and may not disclose or be compelled to disclose, through reporting or testimony or by subpoena, the contents of a confidential communication.

E. There is no privilege pursuant to this section if the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the deaf person knew or should have known to be a crime or fraud.

Historical data: Added by Laws 1993, c. 297, §1, emerg. eff. June 7, 1993

Cases citing this section: None found

§2507. Political Vote [back 1](#)

A. Every person has a privilege to refuse to disclose the tenor of his vote at a political election conducted by secret ballot.

B. This privilege does not apply if the court finds that the vote was cast illegally.

Historical data: Laws 1978, c. 285, §507, eff. Oct. 1, 1978

Cases citing this section: None found

§2508. Trade Secrets [back 1](#)

A person or entity has a privilege, which may be claimed by him, his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege, of the parties and of justice require.

Historical data: Laws 1978, c. 285, §508, eff. Oct. 1, 1978

Cases citing this section: None found

[§2509. Secrets of State and Other Official Information: Governmental Privileges](#) [back 1](#)

A. If the law of the United States creates a governmental privilege that the courts of this state must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.

B. No other governmental privilege is recognized except as created by the Constitution or statutes of this state.

C. If a claim of governmental privilege is sustained and it appears that a party is thereby deprived of material evidence, the court shall make any further orders the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an issue as to which the evidence is relevant or dismissing the action.

Historical data: Laws 1978, c. 285, §509, eff. Oct. 1, 1978

Cases citing this section: None found

[§2510. Identity of Informer](#) [back 1](#)

A. The United States, state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting the investigation.

B. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

C. The following shall be exceptions to the privilege granted in this section:

1. No privilege exists if the identity of the informer or his interest in the subject matter of his communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government;

2. If the informant is also a material witness to the criminal conduct with which the defendant is charged, or was a participant in said criminal conduct conjointly with the defendant, or is shown to be able to give testimony relevant to a material issue in the case.

3. If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the court or the defendant is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, he may require the identity of the informer to be disclosed. The court shall, on request of the government, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this subsection except a disclosure in camera, at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the government.

Historical data: Laws 1978, c. 285, §510, eff. Oct. 1, 1978

Cases citing this section:

1986 OK AG 69, Question by: The Honorable Ray Giles, Oklahoma State Senate, Oklahoma State Senate

Taylor v. State, 1980 OK CR 121, 621 P.2d 1184

Robinson v. State, 1981 OK CR 107, 634 P.2d 734

McCoy v. State, 1985 OK CR 49, 699 P.2d 663

Corley v. State, 1985 OK CR 153, 713 P.2d 12

Fox v. State, 1989 OK CR 51, 779 P.2d 562

[§2511. Waiver of Privilege by Voluntary Disclosure](#) [back 1](#)

A person upon whom this Code confers a privilege against disclosure waives the privilege if he or his predecessor voluntarily discloses or consents to disclosure of any significant part of the privileged matter.

This section does not apply if the disclosure itself is privileged.

Historical data: Laws 1978, c. 285, §511, eff. Oct. 1, 1978

Cases citing this section:

Hooper v. State, 1997 OK CR 64, 947 P.2d 1090

Frederick v. State, 2001 OK CR 34,

[§2512. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim](#)

[Privilege](#) [back 1](#)

A claim of privilege is not defeated by a disclosure which was:

1. Compelled erroneously; or
2. Made without opportunity to claim the privilege.

Historical data: Laws 1978, c. 285, §512, eff. Oct. 1, 1978

Cases citing this section: None found

[§2513. Comment Upon or Inference From Claim of Privilege; Instruction](#) [back 1](#)

A. A claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

B. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

C. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

Historical data: Laws 1978, c. 285, §513, eff. Oct. 1, 1978

Cases citing this section:

Battenfield v. State, 1991 OK CR 82, 816 P.2d 555

Johnson v. State, 1995 OK CR 43, 905 P.2d 818

Jackson v. State, 1998 OK CR 39, 964 P.2d 875

Banks v. State, 2002 OK CR 9,

[ARTICLE 6 - WITNESSES](#) [back 1](#)

[§2601. General Rule of Competency](#) [back 1](#)

Every person is competent to be a witness except as otherwise provided in this Code.

Historical data: Laws 1978, c. 285, §601, eff. Oct. 1, 1978

Cases citing this section:

Panama Processes, S.A. v. Cities Service Co., 1990 OK 66, 796 P.2d 276

Crussel v. Kirk, 1995 OK 41, 894 P.2d 1116

In the Matter of R.H., 2001 OK CIV APP 77, 24 P.3d 881

Davis v. State, 1982 OK CR 95, 647 P.2d 450

Gray v. State, 1982 OK CR 137, 650 P.2d 880

Webb v. State, 1984 OK CR 76, 684 P.2d 1208

Bewley v. State, 1985 OK CR 11, 695 P.2d 1357

Hicks v. State, 1986 OK CR 7, 713 P.2d 18

Kelsey v. State, 1987 OK CR 206, 744 P.2d 190

Dunham v. State, 1988 OK CR 211, 762 P.2d 969

Martinez v. State, 1999 OK CR 33, 984 P.2d 813

Gilson v. State, 2000 OK CR 14, 8 P.3d 883

[§2602. Lack of Personal Knowledge](#) [back 1](#)

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the testimony of the witness himself. This rule is subject to the provisions of [Section 703](#) of this Code.

Historical data: Laws 1978, c. 285, §602, eff. Oct. 1, 1978

Cases citing this section:

Faulkner v. State, 1982 OK CR 84, 646 P.2d 1304

Gray v. State, 1982 OK CR 137, 650 P.2d 880

Maytubby v. State, 1983 OK CR 91, 665 P.2d 849

Hill v. State, 1983 OK CR 161, 672 P.2d 308

Newbury v. State, 1985 OK CR 1, 695 P.2d 531

Wilhite v. State, 1985 OK CR 69, 701 P.2d 774

Green v. State, 1985 OK CR 126, 713 P.2d 1032

Johnson v. State, 1986 OK CR 156, 727 P.2d 965

Owens v. State, 1987 OK CR 264, 747 P.2d 959

Munson v. State, 1988 OK CR 124, 758 P.2d 324

Bristol v. State, 1988 OK CR 244, 764 P.2d 887
McCarty v. State, 1988 OK CR 271, 765 P.2d 1215
Jones v. State, 1989 OK CR 7, 772 P.2d 922
Romano v. State, 1995 OK CR 74, 909 P.2d 92
Littlejohn v. State, 1998 OK CR 75, 989 P.2d 901
Martinez v. State, 1999 OK CR 33, 984 P.2d 813

§2603. Oath or Affirmation [back 1](#)

Every witness shall be required to declare before testifying that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Historical data: Cases citing this section:

In the Matter of R.H., 2001 OK CIV APP 77, 24 P.3d 881
Davis v. State, 1982 OK CR 95, 647 P.2d 450
Dunham v. State, 1988 OK CR 211, 762 P.2d 969
Shelton v. State, 1990 OK CR 34, 793 P.2d 866
Battenfield v. State, 1991 OK CR 82, 816 P.2d 555
Hawkins v. State, 1994 OK CR 83, 891 P.2d 586
Goforth v. State, 1996 OK CR 30, 921 P.2d 1291
Gilson v. State, 2000 OK CR 14, 8 P.3d 883

§2604. Interpreters [back 1](#)

An interpreter is subject to the provisions of this Code relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation.

Historical data: Laws 1978, c. 285, §604, eff. Oct. 1, 1978

Cases citing this section:

Hicks v. State, 1986 OK CR 7, 713 P.2d 18

§2605. Competency of Judge as Witness [back 1](#)

The judge presiding at the trial shall not testify in that trial as a witness. No objection need be made in order to preserve the error.

Historical data: Laws 1978, c. 285, §605, eff. Oct. 1, 1978

Cases citing this section:

Willoughby v. City of Oklahoma City, 1985 OK 64, 706 P.2d 883

§2606. Competency of Juror as Witness [back 1](#)

A. A member of the jury shall not testify as a witness before that jury in the trial of the case in which he is sitting as a juror. If he is called to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

B. Upon an inquiry into the validity of a verdict or indictment, a juror shall not testify as to any matter or statement occurring during the course of the jury's deliberations or as to the effect of anything upon his or another juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes during deliberations. A juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. An affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying shall not be received for these purposes.

Historical data: Laws 1978, c. 285, §606, eff. Oct. 1, 1978

Cases citing this section:

Willoughby v. City of Oklahoma City, 1985 OK 64, 706 P.2d 883
Oxley v. City of Tulsa, by and through Tulsa Airport Authority, 1989 OK 166, 794 P.2d 742
Propst v. Alexander, 1995 OK 57, 898 P.2d 141
Bledsoe by and through Bledsoe v. Truster, 1992 OK CIV APP 25, 839 P.2d 673
Nalley v. Kellwood Co., 1993 OK CIV APP 80, 867 P.2d 1336
Wacoche v. State, 1982 OK CR 55, 644 P.2d 568
Smith v. State, 1982 OK CR 89, 656 P.2d 277

Keller v. State, 1982 OK CR 159, 651 P.2d 1339
Rowland v. State, 1985 OK CR 133, 707 P.2d 1215
Deronde v. State, 1986 OK CR 29, 715 P.2d 84
Weatherly v. State, 1987 OK CR 28, 733 P.2d 1331
Lee v. State, 1987 OK CR 108, 738 P.2d 173
Ellis v. State, 1990 OK CR 43, 795 P.2d 107
Robinson v. State, 1997 OK CR 24, 937 P.2d 101
Smallwood v. State, 1997 OK CR 25, 937 P.2d 111
Cohee v. State, 1997 OK CR 30, 942 P.2d 211
Richie v. State, 1998 OK CR 26, 957 P.2d 1192
Salazar v. State, 1998 OK CR 70, 973 P.2d 315
Stiles v. State, 1999 OK CR 19, 989 P.2d 955
Young v. State, 2000 OK CR 17, 12 P.3d 20

[§2607. Who May Impeach](#) [back 1](#)

The credibility of a witness may be attacked by any party, including the party calling him.

Historical data: Laws 1978, c. 285, §607, eff. Oct. 1, 1978

Cases citing this section:

Three M Investments, Inc. v. Ahrend Co., 1992 OK 33, 827 P.2d 1324
Crussel v. Kirk, 1995 OK 41, 894 P.2d 1116
Witt v. Martin, 1983 OK CIV APP 33, 672 P.2d 312
Driskell v. State, 1983 OK CR 22, 659 P.2d 343
Rushing v. State, 1984 OK CR 39, 676 P.2d 842
Patterson v. State, 1987 OK CR 59, 735 P.2d 338
Smith v. State, 1988 OK CR 292, 766 P.2d 1007
Kinsey v. State, 1990 OK CR 64, 798 P.2d 630
Neal v. State, 1992 OK CR 58, 837 P.2d 919
Nickell v. State, 1994 OK CR 73, 885 P.2d 670
Omalza v. State, 1995 OK CR 80, 911 P.2d 286
Lewis v. State, 1998 OK CR 24, 970 P.2d 1158
Stiles v. State, 1999 OK CR 19, 989 P.2d 955

[§2608. Evidence of Character and Conduct of Witness](#) [back 1](#)

A. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to these limitations:

1. The evidence may refer only to character for truthfulness or untruthfulness; and
2. Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked.

B. Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in [Section 609](#) of this Code, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness if they:

1. Concern his character for truthfulness or untruthfulness;
2. Concern the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

C. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Historical data: Laws 1978, c. 285, §608, eff. Oct. 1, 1978

Cases citing this section:

Moses v. Haney, 1986 OK 62, 725 P.2d 866
Nevaquaya v. State, 1980 OK CR 57, 614 P.2d 82
Cole v. State, 1981 OK CR 118, 634 P.2d 1313
Black v. State, 1983 OK CR 60, 663 P.2d 22
Hall v. State, 1985 OK CR 38, 698 P.2d 33
White v. State, 1985 OK CR 84, 702 P.2d 1058

Heavener v. State, 1985 OK CR 109, 706 P.2d 905
Porter v. State, 1985 OK CR 118, 706 P.2d 540
Hawkins v. State, 1986 OK CR 58, 717 P.2d 1156
Carlin v. State, 1986 OK CR 79, 719 P.2d 465
Johnson v. State, 1986 OK CR 187, 731 P.2d 424
Moore v. State, 1987 OK CR 68, 736 P.2d 161
Wilson v. State, 1987 OK CR 86, 737 P.2d 1197
Stouffer v. State, 1987 OK CR 92, 738 P.2d 1349
Teafatiller v. State, 1987 OK CR 141, 739 P.2d 1009
Jones v. State, 1988 OK CR 267, 764 P.2d 914
Jones v. State, 1989 OK CR 66, 781 P.2d 326
Hawkins v. State, 1989 OK CR 72, 782 P.2d 139
Beck v. State, 1991 OK CR 126, 824 P.2d 385
Klinker v. State, 1992 OK CR 7, 826 P.2d 998
Carolina v. State, 1992 OK CR 65, 839 P.2d 663
Nickell v. State, 1994 OK CR 73, 885 P.2d 670
Martinez v. State, 1995 OK CR 52, 904 P.2d 138
Douglas v. State, 1997 OK CR 79, 951 P.2d 651
Young v. State, 1998 OK CR 62, 992 P.2d 332
State v. Gaytan, 1998 OK CR 71, 972 P.2d 356
Martinez v. State, 1999 OK CR 33, 984 P.2d 813
Frederick v. State, 2001 OK CR 34

[§2609. Impeachment by Evidence of Conviction of Crime](#) [back 1](#)

A. For the purpose of attacking the credibility of a witness:

1. Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to [Section 2403](#) of this title, if the crime was punishable by death or imprisonment in excess of one (1) year pursuant to the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

2. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

B. Evidence of a conviction under this section is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is later, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, if the witness is a defendant currently charged with a sexual offense involving a child, testifying at a criminal proceeding regarding the current charge of the defendant and has a prior conviction for a sexual offense involving a child, the conviction of the prior sexual offense involving a child is admissible for the purpose of impeachment of the defendant regardless of the age of the prior conviction. Evidence of a conviction more than ten (10) years old, as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

C. Evidence of a conviction is not admissible under this Code if:

1. The conviction has been the subject of a pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one (1) year; or

2. The conviction has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.

D. Evidence of juvenile adjudications is not admissible under this Code. The court in a criminal case may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

E. The pendency of an appeal from the conviction does not render evidence of that conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Historical data: Laws 1978, c. 285, §609, eff. Oct. 1, 1978; Laws 1991, c. 62, §4, eff. Sept. 1, 1991; Amended by Laws 2000, HB 1881 c. 245. §1, eff. November 1,2000

Cases citing this section:

Three M Investments, Inc. v. Ahrend Co., 1992 OK 33, 827 P.2d 1324
1993 OK CIV APP 196, 867 P.2d 492, *Boyd v. Boyd*
Morris v. State, 1980 OK CR 11, 607 P.2d 1187
1980 OK CR 58, 614 P.2d 83, *Saulmon v. State*
Dunford v. State, 1980 OK CR 60, 614 P.2d 1115
1980 OK CR 120, 621 P.2d 1181, *Swain v. State*
Bailey v. State, 1981 OK CR 98, 633 P.2d 1252
636 P.2d 378, *Nealy v. State*, 1981 OK CR 142
Shipman v. State, 1982 OK CR 3, 639 P.2d 1248
Kennedy v. State, 1982 OK CR 11, 640 P.2d 971
Hardin v. State, 1982 OK CR 124, 649 P.2d 799
Parks v. State, 1982 OK CR 132, 651 P.2d 686
Moore v. State, 1982 OK CR 142, 650 P.2d 901
Long v. State, 1982 OK CR 185, 654 P.2d 647
Seegars v. State, 1982 OK CR 202, 655 P.2d 563
Johnson v. State, 1983 OK CR 53, 662 P.2d 687
Davis v. State, 1983 OK CR 57, 665 P.2d 1186
Martin v. State, 1983 OK CR 168, 674 P.2d 37
Rushing v. State, 1984 OK CR 39, 676 P.2d 842
Hipp v. City of Tulsa, 1984 OK CR 100, 692 P.2d 566
Leigh v. State, 1985 OK CR 41, 698 P.2d 936
Henegar v. State, 1985 OK CR 56, 700 P.2d 659
White v. State, 1985 OK CR 84, 702 P.2d 1058
Henager v. State, 1986 OK CR 20, 716 P.2d 669
Dyke v. State, 1986 OK CR 44, 716 P.2d 693
Lipe v. State, 1986 OK CR 45, 716 P.2d 700
Hawkins v. State, 1986 OK CR 58, 717 P.2d 1156
Britt v. State, 1986 OK CR 99, 721 P.2d 812
Brison v. State, 1986 OK CR 183, 730 P.2d 537
Hainey v. State, 1987 OK CR 120, 740 P.2d 146
Gay v. State, 1987 OK CR 137, 739 P.2d 531
Robinson v. State, 1987 OK CR 195, 743 P.2d 1088
Parks v. State, 1987 OK CR 252, 746 P.2d 200
McConnell v. State, 1987 OK CR 273, 747 P.2d 332
Cronev v. State, 1987 OK CR 274, 748 P.2d 34
Ingram v. State, 1988 OK CR 102, 755 P.2d 120
Phillips v. State, 1988 OK CR 103, 756 P.2d 604
Mason v. State, 1988 OK CR 113, 756 P.2d 612
Johnson v. State, 1988 OK CR 145, 761 P.2d 484
Stanley v. State, 1988 OK CR 151, 762 P.2d 946
Dunham v. State, 1988 OK CR 211, 762 P.2d 969
Jones v. State, 1988 OK CR 267, 764 P.2d 914
Gilbert v. State, 1988 OK CR 289, 766 P.2d 361
Gourley v. State, 1989 OK CR 28, 777 P.2d 1345
Harris v. State, 1989 OK CR 34, 777 P.2d 1359
Cline v. State, 1989 OK CR 69, 782 P.2d 399
Hardiman v. State, 1990 OK CR 62, 798 P.2d 222
Wells v. State, 1990 OK CR 72, 799 P.2d 1128
Turner v. State, 1990 OK CR 79, 803 P.2d 1152
Banks v. State, 1991 OK CR 51, 810 P.2d 1286
Beck v. State, 1991 OK CR 126, 824 P.2d 385
Chapple v. State, 1993 OK CR 38, 866 P.2d 1213
Scott v. State, 1995 OK CR 14, 891 P.2d 1283

Cheatham v. State, 1995 OK CR 32, 900 P.2d 414
Livingston v. State, 1995 OK CR 68, 907 P.2d 1088
Douglas v. State, 1997 OK CR 79, 951 P.2d 651
Welch v. State, 1998 OK CR 54, 968 P.2d 1231
State v. Gaytan, 1998 OK CR 71, 972 P.2d 356
Williams v. State, 2001 OK CR 9, 22 P.3d 702

§2610. Religious Beliefs or Opinions [back 1](#)

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced.

Historical data: Laws 1978, c. 285, §610, eff. Oct. 1, 1978

Cases citing this section:

Rojem v. State, 1988 OK CR 57, 753 P.2d 359

§2611. Mode and Order of Interrogation and Presentation [back 1](#)

A. Subject to subsection B of Section 611 of this Code, the court shall exercise control over the manner and order of interrogating witnesses and presenting evidence so as to:

1. Make the interrogation and presentation effective for the ascertainment of the truth;
2. Avoid needless consumption of time; and
3. Protect witnesses from harassment or undue embarrassment.

B. Any party to a civil action or proceeding may compel any adverse party or person, or any agent, servant or employee of such party or person, for whose benefit such action or proceeding is instituted, prosecuted or defended, to testify as a witness, at the trial, or by deposition, in the same manner and subject to the same rules as other witnesses, provided that any such adverse party, his agent, servant or employee called as a witness by the opposing party shall be deemed a hostile witness and may be cross-examined by the party calling him to the same extent as any opposition witness.

C. Cross-examination shall be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may permit inquiry into additional matters as if on direct examination.

D. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony. Leading questions should ordinarily be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used on direct examination.

Historical data: Laws 1978, c. 285, §611, eff. Oct. 1, 1978; Note: Section 611 is this section

Cases citing this section:

Middlebrook v. Imler, Tenny & Kugler M.D.'s, Inc., 1985 OK 66, 713 P.2d 572

State ex rel OBA v. Lobaugh, 1988 OK 144, 781 P.2d 806

Three M Investments, Inc. v. Ahrend Co., 1992 OK 33, 827 P.2d 1324

Campbell v. State, 1981 OK CR 136, 636 P.2d 352

Wacoche v. State, 1982 OK CR 55, 644 P.2d 568

Woods v. State, 1983 OK CR 4, 657 P.2d 180

Nutter v. State, 1983 OK CR 14, 658 P.2d 492

Frederick v. State, 1983 OK CR 114, 667 P.2d 988

Cooper v. State, 1983 OK CR 154, 671 P.2d 1168

Grizzle v. State, 1985 OK CR 130, 707 P.2d 1210

Dunham v. State, 1988 OK CR 211, 762 P.2d 969

Hale v. State, 1988 OK CR 263, 764 P.2d 1360

Harris v. State, 1989 OK CR 34, 777 P.2d 1359

Armstrong v. State, 1991 OK CR 34, 811 P.2d 593

Harjo v. State, 1994 OK CR 47, 882 P.2d 1067

Parker v. State, 1996 OK CR 19, 917 P.2d 980

Powell v. State, 2000 OK CR 5, 995 P.2d 510

§2611.1. Testimony of Child 12 Years or Under [back 1](#)

Historical data: Repealed by laws 1993, c. 197, §4, eff. Sept. 1, 1993; see next section

§2611.2. Unusual court procedures to protect rights of children, criminal defendant, and judicial integrity [back 1](#)

A. It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of children and incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "Minor witness" means any child witness in a criminal proceeding that is under eighteen (18) years of age;

2. "Support person" means a parent, other relative or a next friend chosen by the witness to accompany the witness to court proceedings;

3. "Incapacitated witness" means any witness in a criminal proceeding that is a person who is defined as an incapacitated person or vulnerable adult as such terms are defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes; and

4. "Witness" means minor witness and incapacitated witness.

C. 1. In any criminal proceeding, the court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a witness shall be closed to the public. In making the decision, the court shall consider:

a. the nature and seriousness of the offense,

b. the age of the witness,

c. the relationship, if any, of the witness to the defendant,

d. the extent to which the size of the community would preclude the anonymity of the witness,

e. the likelihood of public disgrace of the witness,

f. whether there is an overriding public interest in having the testimony of the minor or incapacitated person presented in open court,

g. whether the district attorney has demonstrated a substantial risk that the identity of the witness would be disclosed to the public during the proceeding,

h. whether the district attorney has demonstrated substantial probability that the disclosure of the identity of the witness would cause serious harm to the witness,

i. whether the witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the witness, and

j. other factors the court may deem necessary to protect the interests of justice.

2. The court shall enter an order stating its findings. If the court determines that the testimony of the witness is to be closed to the public, the court shall in its order establish who will or will not be present during the testimony of the witness, which may include:

a. the defendant and/or the defense counsel,

b. any officer having custody of the defendant,

c. the district attorney or designee and a representative for the state,

d. court personnel as necessary to conduct the hearing, including but not limited to the judge, the court clerk, the bailiff, and the court reporter,

e. jury members, if appropriate, and

f. the witness and a support person for the witness.

D. If the court determines it to be appropriate, the testimony of the witness may be taken in chambers or in some other comfortable place other than the courtroom. When the testimony of a witness is to be taken in a courtroom, the witness and support person shall be brought into the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, the prosecutor and the defense attorney. This meeting shall be for the purpose of explaining the court procedures to the witness and to allow the attorneys an opportunity to establish a rapport with the witness to facilitate later questioning. No one shall discuss the defendant or any facts of the case with the witness during this meeting.

E. A witness shall have the right to be accompanied by a support person while giving testimony at any criminal proceeding. The support person shall not discuss the testimony of the witness with any other witnesses and shall be admonished by the court to not sway, prompt or influence the testimony of the witness in any way.

Historical data: Added by Laws 1996, c. 202, §1, eff. Nov. 1, 1996; redesignated from 12 O.S., §2803.2 Laws 1999, c. 108, §1, eff. Nov. 1, 1999; amended by Laws 2000, HB 2019 c. 340. §21, eff. June 6, 2000
Cases citing this section: None found

§2612. Writing Used to Refresh Memory [back 1](#)

If a witness uses a writing to refresh his memory either while testifying or before testifying, the court shall allow an adverse party to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed by an opposing party that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved, made part of the record, and shall be available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order, the court in a civil case shall make any order justice requires. In criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or declaring a mistrial.

Historical data: Laws 1978, c. 285, §612, eff. Oct. 1, 1978

Cases citing this section:

Wilhite v. State, 1985 OK CR 69, 701 P.2d 774

Teafatiller v. State, 1987 OK CR 141, 739 P.2d 1009

Owens v. State, 1987 OK CR 264, 747 P.2d 959

Kiser v. State, 1989 OK CR 76, 782 P.2d 405

Paxton v. State, 1993 OK CR 59, 867 P.2d 1309

§2613. Prior Statements of Witnesses [back 1](#)

A. In examining a witness concerning a prior statement made by him whether written or not, the statement need not be shown nor its contents disclosed to him at that time but on request the same shall be shown or disclosed to opposing counsel just prior to the cross-examination of the witness.

B. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon. This provision does not apply to admissions of a party opponent as defined in subparagraph B of paragraph 4 of [Section 801](#) of this Code.

Historical data: Laws 1978, c. 285, §613, eff. Oct. 1, 1978

Cases citing this section:

Crussel v. Kirk, 1995 OK 41, 894 P.2d 1116

Pruitt v. State ex Rel Okl. Employment Sec. Com'n, 1996 OK CIV APP 33, 918 P.2d 80

Cole v. State, 1981 OK CR 118, 634 P.2d 1313

State v. McBlair, 1983 OK CR 144, 670 P.2d 606

Wimberly v. State, 1985 OK CR 37, 698 P.2d 27

Rogers v. State, 1986 OK CR 96, 721 P.2d 805

Grayson v. State, 1987 OK CR 277, 747 P.2d 971

Hawkins v. State, 1989 OK CR 72, 782 P.2d 139

Neal v. State, 1992 OK CR 58, 837 P.2d 919

Eddings v. State, 1992 OK CR 78, 842 P.2d 759

Omalza v. State, 1995 OK CR 80, 911 P.2d 286

Williams v. State, 1996 OK CR 16, 915 P.2d 371

Douglas v. State, 1997 OK CR 79, 951 P.2d 651

Stiles v. State, 1999 OK CR 19, 989 P.2d 955

Dodd v. State, 2000 OK CR 2, 993 P.2d 778

§2614. Calling and Interrogation of Witnesses by Court [back 1](#)

A. The court may, on its own motion or at the suggestion of a party, call witnesses, provided that all parties shall have the right of cross-examination of those witnesses.

B. The court may interrogate any witness whether called by itself or by a party.

C. Objections to the calling or interrogating of witnesses by the court may be made at the time or at the next available opportunity when the jury is not present.

Historical data: Laws 1978, c. 285, §614, eff. Oct. 1, 1978

Cases citing this section:

Hicks v. State, 1986 OK CR 7, 713 P.2d 18

Allen v. State, 1993 OK CR 49, 862 P.2d 487

[§2615. Exclusion of Witnesses back 1](#)

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 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 to bar such exclusion, unless the court finds such exclusion to be in the interest of justice.

Historical data: Laws 1978, c. 285, §615, eff. Oct. 1, 1978; Laws 1988, c. 109, §1, eff. Nov. 1, 1988; Laws Cases citing this section:

1991, c. 62, §5, eff. Sept. 1, 1991; Laws 1993, c. 197, §2, eff. Sept. 1, 1993

Clark v. Continental Tank Co., 1987 OK 93, 744 P.2d 949

Pryor Automotive Supply, Inc. v. Estate of Edwards, 1991 OK CIV APP 49, 815 P.2d 202

Barnes v. University of Oklahoma, 1995 OK CIV APP 14, 891 P.2d 614

Dutton v. State, 1984 OK CR 12, 674 P.2d 1134

Villanueva v. State, 1985 OK CR 8, 695 P.2d 858

Dyke v. State, 1986 OK CR 44, 716 P.2d 693

Bartlett v. State, 1987 OK CR 33, 733 P.2d 1350

Kelsey v. State, 1987 OK CR 206, 744 P.2d 190

McKay v. City of Tulsa, 1988 OK CR 238, 763 P.2d 703

Davis v. State, 1990 OK CR 20, 792 P.2d 76

Marshall v. State, 1998 OK CR 30, 963 P.2d 1

ARTICLE 7 - OPINIONS AND EXPERT TESTIMONY [back 1](#)

[§2701. Opinion Testimony by Lay Witnesses back 1](#)

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

1. Rationally based on the perception of the witness; and
2. Helpful to a clear understanding of his testimony or the determination of a fact in issue.

Historical data: Laws 1978, c. 285, §701, eff. Oct. 1, 1978

Cases citing this section:

Matter of Death of Stroer, 1983 OK 94, 672 P.2d 1158

Kinyon v. Kinyon, 1991 OK CIV APP 85, 827 P.2d 898

McClure v. Midnight Rodeo, 1999 OK CIV APP 29, 977 P.2d 1148

King v. State, 1982 OK CR 15, 640 P.2d 983

Lee v. State, 1983 OK CR 41, 661 P.2d 1345

Perkins v. State, 1985 OK CR 25, 695 P.2d 1364

Yates v. State, 1985 OK CR 89, 703 P.2d 197

Green v. State, 1985 OK CR 126, 713 P.2d 1032

Diaz v. State, 1986 OK CR 167, 728 P.2d 503

Smith v. State, 1987 OK CR 94, 737 P.2d 1206

Bechtel v. State, 1987 OK CR 126, 738 P.2d 559

Whittmore v. State, 1987 OK CR 192, 742 P.2d 1154

Martin v. State, 1987 OK CR 265, 747 P.2d 316

Hall v. State, 1988 OK CR 53, 751 P.2d 1091

Wilkett v. State, 1988 OK CR 72, 753 P.2d 383

Kiser v. State, 1989 OK CR 76, 782 P.2d 405

Doyle v. State, 1989 OK CR 85, 785 P.2d 317

Camron v. State, 1992 OK CR 17, 829 P.2d 47

Romano v. State, 1993 OK CR 8, 847 P.2d 368
Trice v. State, 1993 OK CR 19, 853 P.2d 203
Brown v. State, 1994 OK CR 12, 871 P.2d 56
Romano v. State, 1995 OK CR 74, 909 P.2d 92
Reupert v. State, 1997 OK CR 65, 947 P.2d 198
Cannon v. State, 1998 OK CR 28, 961 P.2d 838
Marshall v. State, 1998 OK CR 30, 963 P.2d 1
Patton v. State, 1998 OK CR 66, 973 P.2d 270
Lambert v. State, 1999 OK CR 17, 984 P.2d 221
Alverson v. State, 1999 OK CR 21, 983 P.2d 498
Washington v. State, 1999 OK CR 22, 989 P.2d 960
Ullery v. State, 1999 OK CR 36, 988 P.2d 332
Welch v. State, 2000 OK CR 8, 2 P.3d 356
Frederick v. State, 2001 OK CR 34

[§2702. Testimony by Experts](#) [back 1](#)

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise.

Historical data: Laws 1978, c. 285, §702, eff. Oct. 1, 1978

Woods v. Fruehauf Trailer Corp., 1988 OK 105, 765 P.2d 770
Panama Processes, S.a. v. Cities Service Co., 1990 OK 66, 796 P.2d 276
Sharp v. 251st Street Landfill, Inc., 1996 OK 109, 925 P.2d 546
Drake v. Wal-mart, Inc., 1994 OK CIV APP 47, 876 P.2d 738
Warner v. Hillcrest Medical Center, 1995 OK CIV APP 123, 914 P.2d 1060
In the Matter of B.C., 2000 OK CIV APP 130, 15 P.3d 8
Kennedy v. State, 1982 OK CR 11, 640 P.2d 971
Smith v. State, 1982 OK CR 89, 656 P.2d 277
Roubideaux v. State, 1985 OK CR 105, 707 P.2d 35
Smith v. State, 1987 OK CR 94, 737 P.2d 1206
Marr v. State, 1987 OK CR 173, 741 P.2d 884
Coslow v. State, 1988 OK CR 14, 748 P.2d 999
Berry v. State, 1988 OK CR 83, 753 P.2d 926
McCarty v. State, 1988 OK CR 271, 765 P.2d 1215
Fox v. State, 1989 OK CR 51, 779 P.2d 562
Fowler v. State, 1989 OK CR 52, 779 P.2d 580
Cavazos v. State, 1989 OK CR 53, 779 P.2d 987
Moore v. State, 1990 OK CR 5, 788 P.2d 387
Davenport v. State, 1991 OK CR 14, 806 P.2d 655
Bechtel v. State, 1992 OK CR 55, 840 P.2d 1
Woodruff v. State, 1993 OK CR 7, 846 P.2d 1124
Romano v. State, 1993 OK CR 8, 847 P.2d 368
Revilla v. State, 1994 OK CR 24, 877 P.2d 1143
Clayton v. State, 1995 OK CR 3, 892 P.2d 646
Taylor v. State, 1995 OK CR 10, 889 P.2d 319
Cannon v. State, 1995 OK CR 45, 904 P.2d 89
Romano v. State, 1995 OK CR 74, 909 P.2d 92
Omalza v. State, 1995 OK CR 80, 911 P.2d 286
Salazar v. State, 1996 OK CR 25, 919 P.2d 1120
Bryan v. State, 1997 OK CR 15, 935 P.2d 338
Slaughter v. State, 1997 OK CR 78, 950 P.2d 839
Torres v. State, 1998 OK CR 40, 962 P.2d 3
Littlejohn v. State, 1998 OK CR 75, 989 P.2d 901
Washington v. State, 1999 OK CR 22, 989 P.2d 960
Fairchild v. State, 1999 OK CR 49, 998 P.2d 611
Gilson v. State, 2000 OK CR 14, 8 P.3d 883

Harris v. State, 2000 OK CR 20, 13 P.3d 489
Abshier v. State, 2001 OK CR 13, 28 P.3d 579

[§2703. Bases of Opinion Testimony by Experts](#) [back 1](#)

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Historical data: Laws 1978, c. 285, §703, eff. Oct. 1, 1978

Cases citing this section:

Holley v. Shepard, 1987 OK 92, 744 P.2d 945
Gaines v. Sun Refinery and Marketing, 1990 OK 33, 790 P.2d 1073
Studie v. State, 1985 OK CR 124, 706 P.2d 1390
Van White v. State, 1988 OK CR 47, 752 P.2d 814
McCarty v. State, 1988 OK CR 271, 765 P.2d 1215
Ake v. State, 1989 OK CR 30, 778 P.2d 460
Moore v. State, 1990 OK CR 5, 788 P.2d 387
Revilla v. State, 1994 OK CR 24, 877 P.2d 1143
Green v. State, 1994 OK CR 57, 881 P.2d 751
Lambert v. State, 1994 OK CR 79, 888 P.2d 494
Clayton v. State, 1995 OK CR 3, 892 P.2d 646
Romano v. State, 1995 OK CR 74, 909 P.2d 92
Humphreys v. State, 1997 OK CR 59, 947 P.2d 565
Slaughter v. State, 1997 OK CR 78, 950 P.2d 839
Lewis v. State, 1998 OK CR 24, 970 P.2d 1158
McCarty v. State, 1998 OK CR 61, 977 P.2d 1116

[§2704. Opinion on Ultimate Issue](#) [back 1](#)

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Historical data: Laws 1978, c. 285, §704, eff. Oct. 1, 1978

Cases citing this section:

Johnson v. Wade, 1982 OK 32, 642 P.2d 255
Gabus v. Harvey, 1984 OK 4, 678 P.2d 253
Burgess v. Friedman & Son, Inc., 1981 OK CIV APP 69, 637 P.2d 908
American Nat. Bank & Trust Co. Of Sapulpa v. Bic Corp., 1994 OK CIV APP 70, 880 P.2d 420
Marr v. State, 1987 OK CR 173, 741 P.2d 884
Moore v. State, 1988 OK CR 176, 761 P.2d 866
McCarty v. State, 1988 OK CR 271, 765 P.2d 1215
Fox v. State, 1989 OK CR 51, 779 P.2d 562
J.J.J. v. State, 1989 OK CR 77, 782 P.2d 944
Moore v. State, 1990 OK CR 5, 788 P.2d 387
Hooks v. State, 1993 OK CR 41, 862 P.2d 1273
Dennis v. State, 1994 OK CR 34, 879 P.2d 1227
Romano v. State, 1995 OK CR 74, 909 P.2d 92
Cannon v. State, 1998 OK CR 28, 961 P.2d 838
Littlejohn v. State, 1998 OK CR 75, 989 P.2d 901
Fairchild v. State, 1999 OK CR 49, 998 P.2d 611
Welch v. State, 2000 OK CR 8, 2 P.3d 356
Abshier v. State, 2001 OK CR 13, 28 P.3d 579

[§2705. Disclosure of Facts or Data Underlying Expert Opinion](#) [back 1](#)

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may be required to disclose the underlying facts or data on cross-examination.

Historical data: Laws 1978, c. 285, §705, eff. Oct. 1, 1978

Cases citing this section:

Refrigerated Transport Inc. v. Creek, 1979 OK 11, 590 P.2d 197
Bostick Tank Truck Service v. Nix, 1988 OK 128, 764 P.2d 1344
Gaines v. Sun Refinery and Marketing, 1990 OK 33, 790 P.2d 1073
Zebco v. Houston, 1990 OK 113, 800 P.2d 245
Kerr Glass Co. v. Wilson, 1994 OK CIV APP 69, 880 P.2d 414
Burrows v. State, 1982 OK CR 6, 640 P.2d 533
Casady v. State, 1986 OK CR 114, 721 P.2d 1342
Mills v. Tulsa County District Court, 1989 OK CR 2, 770 P.2d 900
J.D.L., Jr. v. State, 1989 OK CR 71, 782 P.2d 1387
Sellers v. State, 1991 OK CR 41, 809 P.2d 676
Crawford v. State, 1992 OK CR 62, 840 P.2d 627
Walker v. State, 1994 OK CR 66, 887 P.2d 301
Lewis v. State, 1998 OK CR 24, 970 P.2d 1158

ARTICLE 8 - HEARSAY [back 1](#)

§2801. Definitions [back 1](#)

For purposes of this Code:

1. A "statement" is:
 - a. an oral or written assertion, or
 - b. nonverbal conduct of a person, if it is intended by him as an assertion;
2. A "declarant" is a person who makes a statement;
3. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted; and
4. A statement is not hearsay if:
 - a. the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is
 - (1) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or
 - (2) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
 - (3) one of identification of a person made after perceiving the person; or
 - b. the statement is offered against a party and is
 - (1) the party's own statement, in either an individual or a representative capacity, or
 - (2) a statement of which the party has manifested an adoption or belief in its truth, or
 - (3) a statement by a person authorized by the party to make a statement concerning the subject, or
 - (4) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
 - (5) a statement by a conspirator of a party during the course and in furtherance of the conspiracy.

Historical data: Laws 1978, c. 285, §801, eff. Oct. 1, 1978; Laws 1991, c. 62, §6, eff. Sept. 1, 1991

Cases citing this section:

Holley v. Shepard, 1987 OK 92, 744 P.2d 945
State ex rel OBA v. Perkins, 1988 OK 65, 757 P.2d 825
State ex rel OBA v. Lobaugh, 1988 OK 144, 781 P.2d 806
Commodore Home Systems, Inc. v. Citicorp Acceptance Co., Inc., 1989 OK 46, 780 P.2d 674
Griffin v. Griffin, 1992 OK 36, 832 P.2d 810
White v. Adoption of Baby Boy D., 2000 OK 44, 10 P.3d 212
Beattie v. State Ex. Rel. Grand River Dam Authority, 2001 OK 43
Kerr v. Clary, 2001 OK 90, 37 P.3d 841
Russell v. State ex Rel. Grimes, 1983 OK CIV APP 63, 672 P.2d 323
Mantha v. Liquid Carbonic Industries, Inc., 1992 OK CIV APP 28, 839 P.2d 200
Matter of M.A., 1992 OK CIV APP 61, 832 P.2d 437
Matter of M.A.G., 1996 OK CIV APP 103, 924 P.2d 795

Scroggins v. Gaddis, 1999 OK CIV APP 98, 990 P.2d 302
State Ex. Rel. Okla. Dept. Of Public Safety v. 1985 Chevy Blazer, 1999 OK CIV APP 134, 994 P.2d 1183
Roberts v. State, 1981 OK CR 104, 634 P.2d 729
Hill v. State, 1981 OK CR 164, 638 P.2d 1128
Davis v. State, 1982 OK CR 95, 647 P.2d 450
Chambers v. State, 1982 OK CR 123, 649 P.2d 795
Bennett v. State, 1982 OK CR 161, 652 P.2d 1237
Long v. State, 1982 OK CR 185, 654 P.2d 647
Davis v. State, 1983 OK CR 57, 665 P.2d 1186
Holmes v. State, 1983 OK CR 78, 664 P.2d 1063
Stafford v. State, 1983 OK CR 86, 665 P.2d 1205
Maytubby v. State, 1983 OK CR 91, 665 P.2d 849
Frederick v. State, 1983 OK CR 114, 667 P.2d 988
Brownfield v. State, 1983 OK CR 125, 668 P.2d 1165
Stafford v. State, 1983 OK CR 131, 669 P.2d 285
Conley v. State, 1983 OK CR 133, 669 P.2d 304
Cooper v. State, 1983 OK CR 154, 671 P.2d 1168
Kelly v. State, 1984 OK CR 99, 692 P.2d 563
Wauqua v. State, 1985 OK CR 6, 694 P.2d 532
Laske v. State, 1985 OK CR 7, 694 P.2d 536
Lee v. State, 1985 OK CR 62, 700 P.2d 1017
Brooks v. State, 1986 OK CR 22, 714 P.2d 217
Rogers v. State, 1986 OK CR 104, 721 P.2d 820
Sims v. State, 1987 OK CR 2, 731 P.2d 1368
Dunagan v. State, 1987 OK CR 36, 734 P.2d 291
Griffith v. State, 1987 OK CR 38, 734 P.2d 303
Stouffer v. State, 1987 OK CR 92, 738 P.2d 1349
Jones v. State, 1987 OK CR 103, 738 P.2d 525
Martin v. State, 1987 OK CR 127, 738 P.2d 1366
Rawlings v. State, 1987 OK CR 135, 740 P.2d 153
Johns v. State, 1987 OK CR 178, 742 P.2d 1142
Mann v. State, 1988 OK CR 7, 749 P.2d 1151
Lay v. State, 1988 OK CR 60, 752 P.2d 823
Phillips v. State, 1988 OK CR 103, 756 P.2d 604
Plotner v. State, 1988 OK CR 139, 762 P.2d 936
New v. State, 1988 OK CR 165, 760 P.2d 833
Curtis v. State, 1988 OK CR 185, 763 P.2d 377
Greer v. State, 1988 OK CR 190, 763 P.2d 106
Brown v. State, 1988 OK CR 201, 762 P.2d 959
Capaldi v. State, 1988 OK CR 217, 763 P.2d 117
Connell v. State, 1988 OK CR 234, 763 P.2d 383
Nguyen v. State, 1989 OK CR 6, 772 P.2d 401
McClendon v. State, 1989 OK CR 29, 777 P.2d 948
Spencer v. State, 1990 OK CR 49, 795 P.2d 1075
Harjo v. State, 1990 OK CR 53, 797 P.2d 338
Huckaby v. State, 1990 OK CR 84, 804 P.2d 447
Armstrong v. State, 1991 OK CR 34, 811 P.2d 593
Burke v. State, 1991 OK CR 116, 820 P.2d 1344
Workman v. State, 1991 OK CR 125, 824 P.2d 378
Bechtel v. State, 1992 OK CR 55, 840 P.2d 1
Roberts v. State, 1994 OK CR 1, 868 P.2d 712
Allen v. State, 1994 OK CR 13, 871 P.2d 79
Plantz v. State, 1994 OK CR 33, 876 P.2d 268
Fontenot v. State, 1994 OK CR 42, 881 P.2d 69
Walker v. State, 1994 OK CR 66, 887 P.2d 301
Moss v. State, 1994 OK CR 80, 888 P.2d 509

Smallwood v. State, 1995 OK CR 60, 907 P.2d 217
Johnson v. State, 1995 OK CR 62, 911 P.2d 918
Romano v. State, 1995 OK CR 74, 909 P.2d 92
Omalza v. State, 1995 OK CR 80, 911 P.2d 286
Ledbetter v. State, 1997 OK CR 5, 933 P.2d 880
Conover v. State, 1997 OK CR 6, 933 P.2d 904
Hamilton v. State, 1997 OK CR 14, 937 P.2d 1001
Cleary v. State, 1997 OK CR 35, 942 P.2d 736
Hooper v. State, 1997 OK CR 64, 947 P.2d 1090
Douglas v. State, 1997 OK CR 79, 951 P.2d 651
Jackson v. State, 1998 OK CR 39, 964 P.2d 875
Welch v. State, 1998 OK CR 54, 968 P.2d 1231
McCarty v. State, 1998 OK CR 61, 977 P.2d 1116
Patton v. State, 1998 OK CR 66, 973 P.2d 270
Delozier v. State, 1998 OK CR 76, 991 P.2d 22
Alverson v. State, 1999 OK CR 21, 983 P.2d 498
Bernay v. State, 1999 OK CR 37, 989 P.2d 998
Phillips v. State, 1999 OK CR 38, 989 P.2d 1017
Powell v. State, 2000 OK CR 5, 995 P.2d 510
Hammon v. State, 2000 OK CR 7, 999 P.2d 1082
Young v. State, 2000 OK CR 17, 12 P.3d 20
Nelson v. State, 2001 OK CR 4, 21 P.3d 55
Williams v. State, 2001 OK CR 9, 22 P.3d 702
Frederick v. State, 2001 OK CR 34,

[§2802. Hearsay Rule back 1](#)

Hearsay is not admissible except as provided by law.

Historical data: Laws 1978, c. 285, §802, eff. Oct. 1, 1978

Cases citing this section:

White v. Adoption of Baby Boy d., 2000 OK 44, 10 P.3d 212
2001 OK 43, *Beattie v. State ex. rel. Grand River Dam Authority*
Kelly v. State, 1984 OK CR 99, 692 P.2d 563
Griffith v. State, 1987 OK CR 38, 734 P.2d 303
Funkhouser v. State, 1987 OK CR 44, 734 P.2d 815
Jones v. State, 1987 OK CR 103, 738 P.2d 525
Rawlings v. State, 1987 OK CR 135, 740 P.2d 153
Curtis v. State, 1988 OK CR 185, 763 P.2d 377
McCalip v. State, 1989 OK CR 46, 778 P.2d 488
Kennedy v. State, 1992 OK CR 67, 839 P.2d 667
Smallwood v. State, 1995 OK CR 60, 907 P.2d 217

[§2803. Hearsay Exceptions; Availability of Declarant Immaterial back 1](#)

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter;
2. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;
3. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will;
4. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, if reasonably pertinent to diagnosis or treatment;
5. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly.

The memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

6. Any form of memorandum, report, record or data compilation of acts, events, conditions, opinions or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation and calling of every kind, whether or not conducted for profit;

7. Evidence that a matter is not included in the memoranda reports, records or data compilations, in any form, kept in accordance with the provisions of paragraph 6 of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness;

8. To the extent not otherwise provided in this paragraph, records, reports, statements or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual finding resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

- a. investigative reports by police and other law enforcement personnel,
- b. investigative reports prepared by or for a government, a public office or agency when offered by it in a case in which it is a party,
- c. factual findings offered by the government in criminal cases,
- d. factual findings resulting from special investigation of a particular complaint, case or incident, or
- e. any matter as to which the sources of information or other circumstances indicate lack of trustworthiness;

9. Records or data of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office pursuant to requirements of law;

10. To prove the absence of a record, report, statement or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with [Section 902](#) of this Code, or testimony, that diligent search failed to disclose the record, report, statement or data compilation or entry;

11. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage or other similar facts of personal or family history contained in a regularly kept record of a religious organization;

12. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official or other person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter;

13. Statements of fact concerning personal or family history including those contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones;

14. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and a statute authorizes the recording of documents of that kind in that office;

15. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

16. Statements in a document which is at least twenty (20) years old and whose authenticity is established;

17. Market quotations, tabulations, lists, directories or other published compilations generally used and relied upon by the public or by persons in particular occupations;

18. To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits;

19. Reputation among members of his family by blood, adoption or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption or marriage, ancestry or other similar fact of his personal or family history;

20. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community or state or nation in which located;

21. Reputation of a person's character among his associates or in the community;

22. Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a plea of nolo contendere, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one (1) year, to prove any fact essential to sustain the judgment, but not including, when offered by the state in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

23. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation; or

24. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

a. the statement is offered as evidence of a material fact,

b. the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and c. the general purposes of this Code and the interests of justice will best be served by admission of the statement into evidence. A statement shall not be admitted under this exception unless its proponent makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Historical data: Laws 1978, c. 285, §803, eff. Oct. 1, 1978

Cases citing this section:

Paxton v. Ward, 1999 10CIR 1613, 199 F.3d 1197

Matter of W.D., 1985 OK 65, 709 P.2d 1037

Nail by and through Nail v. Oklahoma Children's Memorial Hosp., 1985 OK 101, 710 P.2d 755

Holley v. Shepard, 1987 OK 92, 744 P.2d 945

Lee v. Knight, 1989 OK 50, 771 P.2d 1003

Benham v. Plotner, 1990 OK 64, 795 P.2d 510

Willard v. Kelley, 1990 OK 127, 803 P.2d 1124

O'Neal v. Joy Dependent School Dist., No. 1, Murray County, 1991 OK 118, 820 P.2d 1334

Kerr v. Clary, 2001 OK 90, 37 P.3d 841

Madill Bank and Trust Co. v. Herrmann, 1987 OK CIV APP 4, 738 P.2d 567

Independent School Dist. No. 4 of Rogers County v. Energy Conservation Engineering, Inc., 1987 OK CIV APP 37, 745 P.2d 1200

Arnold v. State, 1987 OK CIV APP 50, 750 P.2d 1137

R.J.B. Gas Pipeline Co. v. Colorado Interstate Gas Co., 1990 OK CIV APP 47, 813 P.2d 14

Matter of M.A., 1992 OK CIV APP 61, 832 P.2d 437

Brown v. Brown, 1992 OK CIV APP 125, 840 P.2d 46

Joffe v. Vaughn, 1993 OK CIV APP 169, 873 P.2d 299

Delong v. State of Oklahoma, 1998 OK CIV APP 32, 956 P.2d 937

Garvin v. Oklahoma Indigent Defense Center, 1999 OK CIV APP 126, 993 P.2d 132

In re Guardianship of H.D.B., 2001 OK CIV APP 147, 38 P.3d 252

Moore v. Burlington Northern Railroad Co., 2002 OK CIV APP 23

Wade v. State, 1981 OK CR 14, 624 P.2d 86

Neilson v. State, 1981 OK CR 66, 639 P.2d 615

Stanberry v. State, 1981 OK CR 156, 637 P.2d 892

Johnson v. State, 1982 OK CR 37, 665 P.2d 815
Davis v. State, 1982 OK CR 95, 647 P.2d 450
Chambers v. State, 1982 OK CR 123, 649 P.2d 795
Hall v. State, 1982 OK CR 141, 650 P.2d 893
Byrd v. State, 1983 OK CR 5, 657 P.2d 183
Jones v. State, 1983 OK CR 31, 660 P.2d 634
Davis v. State, 1983 OK CR 57, 665 P.2d 1186
Mahorney v. State, 1983 OK CR 71, 664 P.2d 1042
Maytubby v. State, 1983 OK CR 91, 665 P.2d 849
Newbury v. State, 1985 OK CR 1, 695 P.2d 531
Cooks v. State, 1985 OK CR 48, 699 P.2d 653
Spuehler v. State, 1985 OK CR 132, 709 P.2d 202
Beavers v. State, 1985 OK CR 146, 709 P.2d 702
Durant v. State, 1986 OK CR 61, 717 P.2d 1161
Devooght v. State, 1986 OK CR 100, 722 P.2d 705
Sims v. State, 1987 OK CR 2, 731 P.2d 1368
Griffith v. State, 1987 OK CR 38, 734 P.2d 303
Funkhouser v. State, 1987 OK CR 44, 734 P.2d 815
Gore v. State, 1987 OK CR 63, 735 P.2d 576
Mills v. State, 1987 OK CR 88, 737 P.2d 573
Stouffer v. State, 1987 OK CR 92, 738 P.2d 1349
Rawlings v. State, 1987 OK CR 135, 740 P.2d 153
Castro v. State, 1987 OK CR 182, 745 P.2d 394
Winkler v. State, 1987 OK CR 249, 745 P.2d 1189
Phillips v. State, 1988 OK CR 103, 756 P.2d 604
Moore v. State, 1988 OK CR 176, 761 P.2d 866
Drake v. State, 1988 OK CR 180, 761 P.2d 879
Hawkins v. State, 1988 OK CR 207, 761 P.2d 918
Lamb v. State, 1988 OK CR 296, 767 P.2d 887
McCalip v. State, 1989 OK CR 46, 778 P.2d 488
Kiser v. State, 1989 OK CR 76, 782 P.2d 405
Day v. State, 1989 OK CR 83, 784 P.2d 79
Sellers v. State, 1991 OK CR 41, 809 P.2d 676
Williamson v. State, 1991 OK CR 63, 812 P.2d 384
Duvall v. State, 1991 OK CR 64, 825 P.2d 621
State v. Tinkler, 1991 OK CR 73, 815 P.2d 190
Reeves v. State, 1991 OK CR 101, 818 P.2d 495
Burke v. State, 1991 OK CR 116, 820 P.2d 1344
Walker v. State, 1992 OK CR 10, 826 P.2d 1002
Boyd v. State, 1992 OK CR 40, 839 P.2d 1363
Hatch v. State, 1992 OK CR 44, 835 P.2d 880
Kennedy v. State, 1992 OK CR 67, 839 P.2d 667
Pickens v. State, 1993 OK CR 15, 850 P.2d 328
Hooks v. State, 1993 OK CR 41, 862 P.2d 1273
Paxton v. State, 1993 OK CR 59, 867 P.2d 1309
Frazier v. State, 1994 OK CR 31, 874 P.2d 1289
Mayes v. State, 1994 OK CR 44, 887 P.2d 1288
Long v. State, 1994 OK CR 60, 883 P.2d 167
Walker v. State, 1994 OK CR 66, 887 P.2d 301
McGregor v. State, 1994 OK CR 71, 885 P.2d 1366
Hooker v. State, 1994 OK CR 75, 887 P.2d 1351
Moss v. State, 1994 OK CR 80, 888 P.2d 509
Marquez v. State, 1995 OK CR 17, 890 P.2d 980
Perry v. State, 1995 OK CR 20, 893 P.2d 521
Smallwood v. State, 1995 OK CR 60, 907 P.2d 217
Williams v. State, 1996 OK CR 16, 915 P.2d 371

Wisdom v. State, 1996 OK CR 22, 918 P.2d 384
Charm v. State, 1996 OK CR 40, 924 P.2d 754
Al-mosawi v. State, 1996 OK CR 59, 929 P.2d 270
Ledbetter v. State, 1997 OK CR 5, 933 P.2d 880
Humphreys v. State, 1997 OK CR 59, 947 P.2d 565
Hooper v. State, 1997 OK CR 64, 947 P.2d 1090
Slaughter v. State, 1997 OK CR 78, 950 P.2d 839
Wood v. State, 1998 OK CR 19, 959 P.2d 1
Cannon v. State, 1998 OK CR 28, 961 P.2d 838
Marshall v. State, 1998 OK CR 30, 963 P.2d 1
McCarty v. State, 1998 OK CR 61, 977 P.2d 1116
Salazar v. State, 1998 OK CR 70, 973 P.2d 315
Huskey v. State, 1999 OK CR 3, 989 P.2d 1
Stiles v. State, 1999 OK CR 19, 989 P.2d 955
Washington v. State, 1999 OK CR 22, 989 P.2d 960
Hagar v. State, 1999 OK CR 35, 990 P.2d 894
Bernay v. State, 1999 OK CR 37, 989 P.2d 998
Powell v. State, 2000 OK CR 5, 995 P.2d 510
Hammon v. State, 2000 OK CR 7, 999 P.2d 1082
Welch v. State, 2000 OK CR 8, 2 P.3d 356
Williams v. State, 2001 OK CR 9, 22 P.3d 702
Frederick v. State, 2001 OK CR 34

[§2803.1. Statements by children twelve years old or younger regarding physical or sexual abuse - Admissibility](#) [back 1](#)

A. A statement made by a child who has not attained thirteen (13) years of age or a person who is an incapacitated person as such term is defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes, 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 in the courts in this state if:

1. The court finds, in a hearing conducted outside the presence of the jury, that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and 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 or pursuant to the provisions of Section 753 et seq. of Title 22 of the Oklahoma Statutes, or

b. is unavailable as defined in [Section 2804](#) of this title as a witness. When the child or incapacitated person is unavailable, such 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.

Historical data: Added by Laws 1984, c. 8, §1, emerg. eff. March 12, 1984; amended by Laws 1986, c. 87, §1, operative July 1, 1986; Laws 1990, c. 224, §8, eff. Sept. 1, 1990; Laws 1992, c. 301, §2, eff. Sept. 1, 1992; Laws 1993, c. 197, §3, eff. Sept. 1, 1993; amended by Laws 1998, c. 24, §1, eff. April 01, 1998; amended by Laws 2000, HB 2019 c. 340. §22, eff. June 6, 2000

Matter of W.D., 1985 OK 65, 709 P.2d 1037
Matter of J.J.J., 1987 OK CIV APP 53, 741 P.2d 491
Matter of A.D.B., 1989 OK CIV APP 55, 778 P.2d 945
Matter of A.S., 1989 OK CIV APP 91, 790 P.2d 539
In the Matter of R.H., 2001 OK CIV APP 77, 24 P.3d 881
Martin v. State, 1987 OK CR 265, 747 P.2d 316

Ludlow v. State, 1988 OK CR 178, 761 P.2d 1293
Drake v. State, 1988 OK CR 180, 761 P.2d 879
Curtis v. State, 1988 OK CR 185, 763 P.2d 377
Dunham v. State, 1988 OK CR 211, 762 P.2d 969
Jones v. State, 1989 OK CR 66, 781 P.2d 326
J.J.J. v. State, 1989 OK CR 77, 782 P.2d 944
Spencer v. State, 1990 OK CR 49, 795 P.2d 1075
Lawrence v. State, 1990 OK CR 56, 796 P.2d 1176
Spears v. State, 1991 OK CR 13, 805 P.2d 681
Burke v. State, 1991 OK CR 116, 820 P.2d 1344
Kennedy v. State, 1992 OK CR 67, 839 P.2d 667
Simpson v. State, 1994 OK CR 40, 876 P.2d 690
Bartell v. State, 1994 OK CR 59, 881 P.2d 92
Applegate v. State, 1995 OK CR 49, 904 P.2d 130
Ferrell v. State, 1995 OK CR 54, 902 P.2d 1113
Wisdom v. State, 1996 OK CR 22, 918 P.2d 384
Reupert v. State, 1997 OK CR 65, 947 P.2d 198
Huskey v. State, 1999 OK CR 3, 989 P.2d 1
Stiles v. State, 1999 OK CR 19, 989 P.2d 955
Wood v. State, 2000 OK CR 16, 11 P.3d 1249

[§2803.2](#). Redesignated as [12 O.S., 2611.2](#). [back 1](#)

Historical data: Added by Laws 1996, c. 202, §1, eff. Nov. 1, 1996. Laws 1999, c. 108, §1, eff. Nov. 1, 1999

Cases citing this section: None found

[§2804. Hearsay Exception; Declarant Unavailable](#) [back 1](#)

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 his statement;
2. Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so;
3. Testifies to a lack of memory of the subject matter of his 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 his statement has been unable to procure his attendance or, in the case of a hearsay exception under paragraphs 2, 3 or 4 of subsection B of this section, his attendance or testimony, by process or other reasonable means. A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability or absence is due to an act by the proponent of his 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 his death was imminent, concerning the cause or circumstances of what he believed to be his impending death;
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 him to civil or criminal liability, or to render invalid a claim by him against another, and which a reasonable man in his position would not have made unless he 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;
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 not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

a. the statement is offered as evidence of a material fact,

b. the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and c. the general purposes of this Code and the interests of justice will best be served by admission of the statement into evidence. A statement shall not be admitted under this exception unless its proponent makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

Historical data: Laws 1978, c. 285, §804, eff. Oct. 1, 1978

Cases citing this section:

Civil Service Com'n of City of Tulsa v. Gresham, 1982 OK 125, 653 P.2d 920

Matter of A.D.B., 1989 OK CIV APP 55, 778 P.2d 945

Matter of A.S., 1989 OK CIV APP 91, 790 P.2d 539

Estate of Bras v. First Bank & Trust Co. Of Sand Springs, 1991 OK CIV APP 68, 821 P.2d 387

El Paso Natural Gas Co. v. Oklahoma Tax Com'n, 1996 OK CIV APP 69, 929 P.2d 1002

Suitor v. State, 1981 OK CR 67, 629 P.2d 1266

Stanberry v. State, 1981 OK CR 156, 637 P.2d 892

Johnson v. State, 1982 OK CR 37, 665 P.2d 815

Byrd v. State, 1983 OK CR 5, 657 P.2d 183

Nobles v. State, 1983 OK CR 112, 668 P.2d 1139

State v. Chatman, 1983 OK CR 146, 671 P.2d 56

Cooper v. State, 1983 OK CR 154, 671 P.2d 1168

Allison v. State, 1983 OK CR 169, 675 P.2d 142

Allen v. State, 1984 OK CR 34, 675 P.2d 456

Rushing v. State, 1984 OK CR 39, 676 P.2d 842

Newbury v. State, 1985 OK CR 1, 695 P.2d 531

Cardenas v. State, 1985 OK CR 21, 695 P.2d 876

Perkins v. State, 1985 OK CR 25, 695 P.2d 1364

Britt v. State, 1986 OK CR 99, 721 P.2d 812

Rogers v. State, 1986 OK CR 104, 721 P.2d 820

Ybarra v. State, 1987 OK CR 31, 733 P.2d 1342

Funkhouser v. State, 1987 OK CR 44, 734 P.2d 815

Vuletich v. State, 1987 OK CR 61, 735 P.2d 568

Jones v. State, 1987 OK CR 103, 738 P.2d 525

Castro v. State, 1987 OK CR 182, 745 P.2d 394

Mann v. State, 1988 OK CR 7, 749 P.2d 1151

Davis v. State, 1988 OK CR 73, 753 P.2d 388

Costa v. State, 1988 OK CR 74, 753 P.2d 393

Honeycutt v. State, 1988 OK CR 76, 754 P.2d 557

Munson v. State, 1988 OK CR 124, 758 P.2d 324

Moore v. State, 1988 OK CR 176, 761 P.2d 866

Connell v. State, 1988 OK CR 234, 763 P.2d 383

Ashinsky v. State, 1989 OK CR 59, 780 P.2d 201

Hiler v. State, 1990 OK CR 54, 796 P.2d 346

West v. State, 1990 OK CR 61, 798 P.2d 1083

Williamson v. State, 1991 OK CR 63, 812 P.2d 384

Burke v. State, 1991 OK CR 116, 820 P.2d 1344

Hooks v. State, 1993 OK CR 41, 862 P.2d 1273

Paxton v. State, 1993 OK CR 59, 867 P.2d 1309

Howell v. State, 1994 OK CR 62, 882 P.2d 1086
Lafevers v. State, 1995 OK CR 26, 897 P.2d 292
Omalsa v. State, 1995 OK CR 80, 911 P.2d 286
Cleary v. State, 1997 OK CR 35, 942 P.2d 736
Slaughter v. State, 1997 OK CR 78, 950 P.2d 839
Stiles v. State, 1999 OK CR 19, 989 P.2d 955
Washington v. State, 1999 OK CR 22, 989 P.2d 960
Bland v. State, 2000 OK CR 11, 4 P.3d 702
Frederick v. State, 2001 OK CR 34,

[§2805. Hearsay Within Hearsay](#) [back 1](#)

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in this Code.

Historical data: Laws 1978, c. 285, §805, eff. Oct. 1, 1978

Cases citing this section:

Jones v. State, 1987 OK CR 103, 738 P.2d 525
Rawlings v. State, 1987 OK CR 135, 740 P.2d 153
Winkler v. State, 1987 OK CR 249, 745 P.2d 1189

[§2806. Attacking and Supporting Credibility of Declarant](#) [back 1](#)

When a hearsay statement, or a statement defined in divisions (2), (3), (4) or (5) of subparagraph b of paragraph 4 of [Section 801](#) of this Code, has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

Historical data: Laws 1978, c. 285, §806, eff. Oct. 1, 1978

Cases citing this section: None found

ARTICLE 9 - AUTHENTICATION AND IDENTIFICATION [back 1](#)

[§2901. Requirement of Authentication or Identification](#) [back 1](#)

A. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims it to be.

B. The following are illustrative examples of authentication or identification conforming with the requirements of this Code:

1. Testimony that a matter is what it is claimed to be;
2. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation;
3. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated;
4. Appearance, content, substance, internal patterns or other distinctive characteristics taken in conjunction with circumstances;
5. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker;
6. Telephone conversations by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business if:
 - a. in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or
 - b. in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone;
7. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement or data compilation, in any form, is from the

public office where items of this nature are kept;

8. Evidence that a document or data compilation, in any form:

- a. is in such condition as to create no suspicion concerning its authenticity,
- b. was in a place where it, if authentic, would likely be, and
- c. has been in existence twenty (20) years or more at the time it is offered;

9. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result; or

10. Any method of authentication or identification provided by statute or by rules prescribed by the Supreme Court pursuant to statutory authority.

Historical data: Laws 1978, c. 285, §901, eff. Oct. 1, 1978

Cases citing this section:

Gilhooly v. State, 1981 OK CR 33, 625 P.2d 1274

Mayberry v. State, 1981 OK CR 43, 626 P.2d 1361

Hightower v. State, 1983 OK CR 162, 672 P.2d 671

Lee v. State, 1985 OK CR 62, 700 P.2d 1017

Millwood v. State, 1986 OK CR 106, 721 P.2d 1322

Gore v. State, 1987 OK CR 63, 735 P.2d 576

Fixico v. State, 1987 OK CR 64, 735 P.2d 580

Hopper v. State, 1987 OK CR 78, 736 P.2d 538

Hall v. State, 1988 OK CR 61, 753 P.2d 372

Tapia v. State, 1988 OK CR 82, 753 P.2d 924

Collins v. State, 1988 OK CR 132, 758 P.2d 340

New v. State, 1988 OK CR 165, 760 P.2d 833

McClellan v. State, 1988 OK CR 208, 762 P.2d 281

Davis v. State, 1990 OK CR 20, 792 P.2d 76

Crawford v. State, 1992 OK CR 62, 840 P.2d 627

Black v. State, 1994 OK CR 4, 871 P.2d 35

Pennington v. State, 1995 OK CR 79, 913 P.2d 1356

Hooper v. State, 1997 OK CR 64, 947 P.2d 1090

Short v. State, 1999 OK CR 15, 980 P.2d 1081

Bernay v. State, 1999 OK CR 37, 989 P.2d 998

Powell v. State, 2000 OK CR 5, 995 P.2d 510

[§2902. Self-Authentication](#) [back 1](#)

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

1. A document bearing a seal purporting to be that of the United States or of any state, district, commonwealth, territory or insular possession thereof, including the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, office or agency thereof, and a signature purporting to be an attestation or execution;

2. A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in paragraph 1 of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

3. A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

a. of the executing or attesting person, or

b. of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness or signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final

certification;

4. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph 1, 2 or 3 of this section or complying with any statute or by rules prescribed by the Supreme Court pursuant to statutory authority;

5. Books, pamphlets or other publications purporting to be issued by public authority;

6. Printed materials purporting to be newspapers or periodicals;

7. Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin;

8. Documents accompanied by a certificate of acknowledgment under the hand and the seal of a notary public or other officer authorized by law to take acknowledgments;

9. Commercial paper, signatures thereon, and related documents to the extent provided by general commercial law; and

10. Any signature, document or other matter declared by act of the Legislature to be presumptively or prima facie genuine or authentic.

Historical data: Laws 1978, c. 285, §902, eff. Oct. 1, 1978

Cases citing this section:

Wade v. State, 1981 OK CR 14, 624 P.2d 86

Geary v. State, 1985 OK CR 141, 709 P.2d 690

New v. State, 1988 OK CR 165, 760 P.2d 833

Hishaw v. City of Oklahoma City, 1991 OK CR 122, 822 P.2d 1139

§2903. Subscribing Witness' Testimony Unnecessary [back 1](#)

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction governing the validity of the writing.

Historical data: Laws 1978, c. 285, §903, eff. Oct. 1, 1978

Cases citing this section: None found

ARTICLE 10 - CONTENT OF WRITINGS, RECORDINGS AND PHOTOGRAPHS [back 1](#)

§3001. Definitions [back 1](#)

For purposes of this Code:

1. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation;

2. "Photographs" include still photographs, x-ray films, video tapes, and motion pictures;

3. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any print out or other output readable by sight, shown to reflect the data accurately, is an "original"; and

4. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique including, but not limited to, storage and reproduction by means of an optical disk, or other forms of mass storage, electronic imaging, or electronic data processing, or a facsimile machine or similar device which reproduces documents transmitted over telephone lines, or similar devices or processes and which accurately reproduce the original.

Historical data: Added by Laws 1978, c. 285, §1001, eff. Oct. 1, 1978; amended by Laws 1992, c. 222, §1, eff. Sept. 1, 1992; Laws 1995, c. 135, §1, eff. Nov. 1, 1995

Cases citing this section:

1983 OK AG 191, Question by: Robert L. Clark, Jr., State Records Administrator and Secretary, Archives and Records Commission, Archives and Records Commission

1995 OK AG 78, Question by: Marilyn Hughes, Executive Director, Ethics Commission, Ethics Commission

Parks v. State, 1982 OK CR 132, 651 P.2d 686

Anderson v. State, 1985 OK CR 94, 704 P.2d 499

Martin v. State, 1988 OK CR 241, 763 P.2d 711

§3002. Requirement of Original [back 1](#)

To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required except as otherwise provided in this Code or by other statutes.

Historical data: Laws 1978, c. 285, §1002, eff. Oct. 1, 1978

Cases citing this section:

Timmons v. Royal Globe Ins. Co., 1982 OK 97, 653 P.2d 907

Castle v. Double Time, Inc., 1986 OK 80, 737 P.2d 900

Public Service Company of Oklahoma v. B. Willis, C.P.A., Inc., 1997 OK 78, 941 P.2d 995

1995 OK AG 78, Question by: M. Hughes, Exec. Director, Ethics Commission

Corder v. Oklahoma Medical Research Foundation, 1999 OK CIV APP 33, 980 P.2d 1122

Barr v. State, 1988 OK CR 187, 761 P.2d 897

Peninger v. State, 1991 OK CR 60, 811 P.2d 609

Howell v. State, 1998 OK CR 53, 967 P.2d 1221

§3003. Admissibility of Duplicates [back 1](#)

A duplicate is admissible to the same extent as an original under this rule or as may otherwise be provided by statute unless:

1. A question is raised as to the authenticity of the original; or
2. In the circumstances it would be unfair to admit the duplicate in lieu of the original.

Historical data: Laws 1978, c. 285, §1003, eff. Oct. 1, 1978

Cases citing this section:

1995 OK AG 78, Question by: Marilyn Hughes, Executive Director, Ethics Commission, Ethics Commission

Foster v. State, 1987 OK CR 174, 742 P.2d 1131

§3004. Admissibility of Other Evidence of Contents [back 1](#)

The original is not required, and a duplicate or other evidence of the contents of a writing, recording, or photograph is admissible if:

1. All originals are lost or have been destroyed unless the proponent lost or destroyed them in bad faith;
2. No original can be obtained by any available judicial process or procedure;
3. At a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearings and the party does not produce the original at the hearing; or
4. The writing, recording, or photograph is not closely related to a controlling issue.

Historical data: Added by Laws 1978, c. 285, §1004, eff. Oct. 1, 1978; amended by Laws 1995, c. 135, §2, eff. Nov. 1, 1995

Cases citing this section:

Castle v. Double Time, Inc., 1986 OK 80, 737 P.2d 900

R.j.b. Gas Pipeline Co. v. Colorado Interstate Gas Co., 1990 OK CIV APP 47, 813 P.2d 14

Wilhite v. State, 1985 OK CR 69, 701 P.2d 774

§3005. Public Records [back 1](#)

The contents of an official record or of a document authorized to be recorded or filed and actually recorded or filed, including data in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with [Section 902](#) of this Code or testified to be correct by a witness who has compared it with the original. If a copy which complies with this section cannot be obtained by the exercise of reasonable diligence then other evidence of the contents may be given.

Historical data: Laws 1978, c. 285, §1005, eff. Oct. 1, 1978

Cases citing this section:

1983 OK AG 191, Question by: R. Clark, Jr., State Records Administrator and Secy., Archives and Records Commission

R.J.B. Gas Pipeline Co. v. Colorado Interstate Gas Co., 1990 OK CIV APP 47, 813 P.2d 14

Tapia v. State, 1988 OK CR 82, 753 P.2d 924

[§3006. Summaries](#) [back 1](#)

The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place.

The judge may order that they be produced in court.

Historical data: Laws 1978, c. 285, §1006, eff. Oct. 1, 1978

Cases citing this section:

Nail by and through Nail v. Oklahoma Children's Memorial Hosp., 1985 OK 101, 710 P.2d 755

State ex Rel. Henry v. Southwestern Bell Telephone Co., 1991 OK 134, 825 P.2d 1305

Barr v. State, 1988 OK CR 187, 761 P.2d 897

[§3007. Testimony or Written Admission of Party](#) [back 1](#)

Contents of writings, recordings or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission without accounting for the nonproduction of the original.

Historical data: Laws 1978, c. 285, §1007, eff. Oct. 1, 1978

Cases citing this section: None found

[§3008. Functions of Judge and Jury](#) [back 1](#)

When the admissibility of other evidence of contents of writings, recordings or photographs depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of [Section 104](#) of this Code. However, when an issue is raised questioning:

1. Whether the asserted writing ever existed;
2. Whether another writing, recording or photograph produced at the trial is the original; or
3. Whether other evidence of contents correctly reflects the contents; the issue is for the trier of fact to determine.

Historical data: Laws 1978, c. 285, §1008, eff. Oct. 1, 1978

Cases citing this section: None found

[§3009. Medical bills - Identification](#) [back 1](#)

Upon the trial of any civil case involving injury, disease or disability, the patient, a member of his family or any other person responsible for the care of the patient, shall be a competent witness to identify doctor bills, hospital bills, ambulance service bills, drug bills and similar bills for expenses incurred in the treatment of the patient upon a showing by the witness that such bills were received from a licensed practicing physician, hospital, ambulance service, pharmacy, drug store, or supplier of therapeutic or orthopedic devices, and that such expenses were incurred in connection with the treatment of the injury, disease or disability involved in the subject of litigation at trial. Such items of evidence need not be identified by the person who submits the bill, and it shall not be necessary for an expert witness to testify that the charges were reasonable and necessary.

Historical data: Laws 1979, c. 37, §1

Cases citing this section: None found

[§3010.](#) Repealed - related to requests for admissions [back 1](#)

Historical data: Repealed by Laws 1982, c. 198, §16

Cases citing this section: None found

[ARTICLE 11 - MISCELLANEOUS](#) [back 1](#)

[§3101. Codification](#) [back 1](#)

The sections in Articles I through X of this Code shall be codified in the Oklahoma Statutes as numbered in this Code and designated Chapter 37 of Title 12, unless there is created a duplication in numbering.

Added by Laws 1978, c. 285, §1101, eff. October 1, 1978

Cases citing this section: None found

[§3102. Repealer](#) [back 1](#)

12 O.S. 1971 Sections 381, as amended by Section 1, Chapter 13, O.S.L. 1973, 382 through 385, Sections 1 through 3, Chapter 123, O.S.L. 1974, 401, 424, 486, 489, 490, 494, 495, 497 through 499, 501, 502, 503, as amended by Section 1, Chapter 153, O.S.L. 1975, 504, 541 through 547, 1705.1 through 1705.4 (12 O.S.Supp. 1976 Sections 381, 385.1 through 385.3 and 503), Sections 1 through 12, Chapter 265, O.S.L. 1977 (12 O.S.Supp. 1977 Section 418.1 through 418.12), 16 O.S. 1971 Section 27, 20 O.S. 1971 Section 3001, 21 O.S. 1971 Section 506, 22 O.S. 1971 Section 334, 59 O.S. 1971 Section 1372 and 67 O.S. 1971 Sections 64 through 66, are hereby repealed.

Historical data: Laws 1978, c. 285, §1102, eff. Oct. 1, 1978

Cases citing this section:

Stafford v. State, 1983 OK CR 131, 669 P.2d 285

[§3103. Effective Date](#) [back 1](#)

This act shall become effective October 1, 1978.

Historical data: Added by Laws 1978, c. 285, §1103, eff. Oct. 1, 1978

Cases citing this section: None found

[Top](#)