

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 775*
Senate Judiciary II Committee Substitute Adopted 7/29/09

Short Title: Alt. Testimony/Children and Adults with Disab.

(Public)

Sponsors:

Referred to:

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR PERSONS
3 WITH DEVELOPMENTAL DISABILITIES AND PERSONS WITH MENTAL
4 RETARDATION, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON
5 AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 6 of Chapter 8C of the General Statutes is amended by adding
8 a new section to read:

9 **"Rule 616. Alternative testimony of witnesses with developmental disabilities or mental**
10 **retardation in civil cases and special proceedings.**

11 (a) Definitions. – The following definitions apply to this section:

12 (1) The definitions set out in G.S. 122C-3.

13 (2) "Remote testimony" means a method by which a witness testifies outside of
14 an open forum and outside of the physical presence of a party or parties.

15 (b) Remote Testimony Authorized. – A person with a developmental disability or a
16 person with mental retardation who is competent to testify may testify by remote testimony in a
17 civil proceeding or special proceeding if the court determines by clear and convincing evidence
18 that the witness would suffer serious emotional distress from testifying in the presence of a
19 named party or parties or from testifying in an open forum and that the ability of the witness to
20 communicate with the trier of fact would be impaired by testifying in the presence of a named
21 party or parties or from testifying in an open forum.

22 (c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for
23 good cause shown, the court shall hold an evidentiary hearing to determine whether to allow
24 remote testimony. The hearing shall be recorded unless recordation is waived by all parties.
25 The presence of the witness is not required at the hearing unless so ordered by the presiding
26 judge.

27 (d) Order. – An order allowing or disallowing the use of remote testimony shall state
28 the findings and conclusions of law that support the court's determination. An order allowing
29 the use of remote testimony also shall do all of the following:

30 (1) State the method by which the witness is to testify.

31 (2) List any individual or category of individuals allowed to be in or required to
32 be excluded from the presence of the witness during testimony.

33 (3) State any special conditions necessary to facilitate the cross-examination of
34 the witness.

35 (4) State any condition or limitation upon the participation of individuals in the
36 presence of the witness during the testimony.

37 (5) State any other conditions necessary for taking or presenting testimony.



1 (e) Testimony. – The method of remote testimony shall allow the trier of fact and all
2 parties to observe the demeanor of the witness as the witness testifies in a similar manner as if
3 the witness were testifying in the open forum. Except as provided in this section, the court shall
4 ensure that the counsel for all parties is physically present where the witness testifies and has a
5 full and fair opportunity for examination and cross-examination of the witness. In a proceeding
6 where a party is representing itself, the court may limit or deny the party from being physically
7 present during testimony if the court finds that the witness would suffer serious emotional
8 distress from testifying in the presence of the party. A party may waive the right to have
9 counsel physically present where the witness testifies.

10 (f) Nonexclusive Procedure and Standard. – Nothing in this section shall prohibit the
11 use or application of any other method or procedure authorized or required by law for the
12 introduction into evidence of statements or testimony of a person with a developmental
13 disability or a person with mental retardation."

14 **SECTION 2.** Article 73 of Chapter 15A of the General Statutes is amended by
15 adding a new section to read:

16 **"§ 15A-1225.2. Witnesses with developmental disabilities or mental retardation; remote**
17 **testimony.**

18 (a) Definitions. – The following definitions apply to this section:

19 (1) The definitions set out in G.S. 122C-3.

20 (2) "Remote testimony" means a method by which a witness testifies outside of
21 an open forum and outside of the physical presence of a party or parties.

22 (b) Remote Testimony Authorized. – A person with a developmental disability or a
23 person with mental retardation who is competent to testify may testify by remote testimony in a
24 prosecution of a person charged with violating a criminal law of this State and in any hearing or
25 proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a
26 juvenile is alleged to have committed an offense that would be a criminal offense if committed
27 by an adult if the court determines by clear and convincing evidence that the witness would
28 suffer serious emotional distress from testifying in the presence of the defendant and that the
29 ability of the witness to communicate with the trier of fact would be impaired by testifying in
30 the presence of the defendant.

31 (c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for
32 good cause shown, the court shall hold an evidentiary hearing to determine whether to allow
33 remote testimony. The hearing shall be recorded unless recordation is waived by all parties.
34 The presence of the witness is not required at the hearing unless so ordered by the presiding
35 judge.

36 (d) Order. – An order allowing or disallowing the use of remote testimony shall state
37 the findings and conclusions of law that support the court's determination. An order allowing
38 the use of remote testimony also shall do all of the following:

39 (1) State the method by which the witness is to testify.

40 (2) List any individual or category of individuals allowed to be in or required to
41 be excluded from the presence of the witness during testimony.

42 (3) State any special conditions necessary to facilitate the cross-examination of
43 the witness.

44 (4) State any condition or limitation upon the participation of individuals in the
45 presence of the witness during the testimony.

46 (5) State any other conditions necessary for taking or presenting testimony.

47 (e) Testimony. – The method of remote testimony shall allow the trier of fact and all
48 parties to observe the demeanor of the witness as the witness testifies in a similar manner as if
49 the witness were testifying in the open forum. The court shall ensure that the counsel for all
50 parties, except a pro se defendant, is physically present where the witness testifies and has a full
51 and fair opportunity for examination and cross-examination of the witness. The court shall

1 ensure that the defendant or juvenile respondent has the ability to communicate privately with
2 defense counsel during the remote testimony. A party may waive the right to have counsel
3 physically present where the witness testifies. Nothing in this section shall be construed to limit
4 the provisions of G.S. 15A-1225.

5 (f) Nonexclusive Procedure and Standard. – Nothing in this section shall prohibit the
6 use or application of any other method or procedure authorized or required by law for the
7 introduction into evidence of statements or testimony of a person with a developmental
8 disability or a person with mental retardation."

9 **SECTION 3.** This act becomes effective December 1, 2009, and applies to any
10 hearings or trials held on or after that date. Nothing in this act shall be construed to abrogate
11 any judicial rulings or decisions prior to the effective date of this act that allowed or disallowed
12 witness testimony in any criminal proceeding or abrogate any judicial rulings that prohibit a
13 psychological evaluation of an unwilling witness.