

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 192  
Corrected Copy 2/19/09  
Committee Substitute Favorable 3/2/09  
Senate Commerce Committee Substitute Adopted 6/30/09

Short Title: Child Witness Testimony/Procedures.

(Public)

Sponsors:

Referred to:

February 18, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH PROCEDURAL REQUIREMENTS FOR CHILD WITNESS  
3 TESTIMONY IN CRIMINAL CASES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 73 of Chapter 15A of the General Statutes is amended by  
6 adding a new section to read:

7 **"§ 15A-1225A. Child witnesses; remote testimony.**

8 (a) Definitions:

9 (1) Child. – For the purposes of this section, a minor who is under the age of 16  
10 years old at the time of the testimony.

11 (2) Criminal proceeding. – Any hearing or trial in a prosecution of a person  
12 charged with violating a criminal law of this State, and any hearing or  
13 proceeding conducted under Subchapter II of Chapter 7B of the General  
14 Statutes where a juvenile is alleged to have committed an offense that would  
15 be a criminal offense if committed by an adult.

16 (3) Remote testimony. – A method by which a child witness testifies in a  
17 criminal proceeding outside of the physical presence of the defendant.

18 (b) Remote Testimony Authorized. – In a criminal proceeding, a child witness who has  
19 been found competent to testify may testify, under oath or affirmation, other than in an open  
20 forum when the court determines:

21 (1) That the child witness would suffer serious emotional distress, not by the  
22 open forum in general, but by testifying in the defendant's presence, and

23 (2) That the child's ability to communicate with the trier of fact would be  
24 impaired.

25 (c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for  
26 good cause shown, the court shall hold an evidentiary hearing to determine whether to allow  
27 remote testimony. Hearings in the superior court division, and hearings conducted under  
28 Subchapter II of Chapter 7B of the General Statutes, shall be recorded. The presence of the  
29 child witness is not required at the hearing unless ordered by the presiding judge.

30 (d) Order. – An order allowing or disallowing the use of remote testimony shall state  
31 the findings of fact and conclusions of law that support the court's determination. An order  
32 allowing the use of remote testimony shall do the following:

33 (1) State the method by which the child is to testify.

34 (2) List any individual or category of individuals allowed to be in, or required to  
35 be excluded from, the presence of the child during the testimony.



1           (3)    State any special conditions necessary to facilitate the cross-examination of  
2           the child.

3           (4)    State any condition or limitation upon the participation of individuals in the  
4           child's presence during his or her testimony.

5           (5)    State any other condition necessary for taking or presenting the testimony.

6       (e)    Testimony. – The method used for remote testimony shall allow the judge, jury, and  
7       defendant or juvenile respondent to observe the demeanor of the child as the child testifies in a  
8       similar manner as if the child were in the open forum. The court shall ensure that the defense  
9       counsel, except a pro se defendant, is physically present where the child testifies, has a full and  
10       fair opportunity for cross-examination of the child witness, and has the ability to communicate  
11       privately with the defendant or juvenile respondent during the remote testimony. Nothing in  
12       this section shall be construed to limit the provisions of G.S. 15A-1225.

13       (f)    Nonexclusive Procedure and Standard. – Nothing in this section shall:

14           (1)    Prohibit the use or application of any other method or procedure authorized  
15           or required by statute, common law, or rule for the introduction into  
16           evidence of the statements or testimony of a child in a criminal or  
17           noncriminal proceeding.

18           (2)    Be construed to require a court, in noncriminal proceedings, to apply the  
19           standard set forth in subsection (b) of this section, or to deviate from a  
20           standard or standards authorized by statute, common law, or rule, for  
21           allowing the use of remote testimony in noncriminal proceedings.

22       (g)    This section does not apply if the defendant is an attorney pro se, unless the  
23       defendant has a court-appointed attorney assisting the defendant in the defense, in which case  
24       only the court-appointed attorney shall be permitted in the room with the child during the  
25       child's testimony."

26           **SECTION 2.** This act becomes effective December 1, 2009, and applies to any  
27       hearings or trials held on or after that date. Nothing in this act shall be construed to (i) abrogate  
28       any judicial rulings or decisions prior to the effective date of this act that allowed or disallowed  
29       witness testimony in any criminal proceeding or (ii) abrogate any judicial rulings that prohibit a  
30       psychological evaluation of an unwilling witness.