

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

5

HOUSE BILL 192
Corrected Copy 2/19/09
Committee Substitute Favorable 3/2/09
Senate Judiciary I Committee Substitute Adopted 6/30/09
Fifth Edition Engrossed 7/8/09

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-1225.1. 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.



- 1 (2) List any individual or category of individuals allowed to be in, or required to
2 be excluded from, the presence of the child during the testimony.
- 3 (3) State any special conditions necessary to facilitate the cross-examination of
4 the child.
- 5 (4) State any condition or limitation upon the participation of individuals in the
6 child's presence during his or her testimony.
- 7 (5) State any other condition necessary for taking or presenting the testimony.
- 8 (e) Testimony. – The method used for remote testimony shall allow the judge, jury, and
9 defendant or juvenile respondent to observe the demeanor of the child as the child testifies in a
10 similar manner as if the child were in the open forum. The court shall ensure that the defense
11 counsel, except a pro se defendant, is physically present where the child testifies, has a full and
12 fair opportunity for cross-examination of the child witness, and has the ability to communicate
13 privately with the defendant or juvenile respondent during the remote testimony. Nothing in
14 this section shall be construed to limit the provisions of G.S. 15A-1225.
- 15 (f) Nonexclusive Procedure and Standard. – Nothing in this section shall:
- 16 (1) Prohibit the use or application of any other method or procedure authorized
17 or required by statute, common law, or rule for the introduction into
18 evidence of the statements or testimony of a child in a criminal or
19 noncriminal proceeding.
- 20 (2) Be construed to require a court, in noncriminal proceedings, to apply the
21 standard set forth in subsection (b) of this section, or to deviate from a
22 standard or standards authorized by statute, common law, or rule, for
23 allowing the use of remote testimony in noncriminal proceedings.
- 24 (g) This section does not apply if the defendant is an attorney pro se, unless the
25 defendant has a court-appointed attorney assisting the defendant in the defense, in which case
26 only the court-appointed attorney shall be permitted in the room with the child during the
27 child's testimony."

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