

February 17, 2009

**H 192. CHILD WITNESS TESTIMONY/CODIFY CRIM. LAW.** Filed 2/17/09. *TO CODIFY NORTH CAROLINA LAW ON CHILD WITNESS TESTIMONY IN CRIMINAL CASES.*

Enacts a new GS 15A-1225A to authorize, in a criminal proceeding, the use of remote testimony of a minor who has been found competent to testify and testifies under oath or affirmation, rather than requiring testimony in an open forum if the court determines (1) that the minor would suffer more than de minimus emotional distress, not by testifying in the open forum in general, but by testifying in the defendant's presence and (2) that the minor's ability to communicate with the trier of fact would be impaired. Requires that the court hold an evidentiary hearing on whether to allow remote testimony, upon showing of good cause. Provides that the hearing is conducted on record if held in the superior court division and that the presence of the minor is not required unless ordered by the presiding judge. Requires that an order allowing or disallowing the use of remote testimony state the findings of fact and conclusions of law and that an order allow remote testimony. The order must (1) state the method of testimony; (2) list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the minor during the testimony; (3) state any special conditions necessary to facilitate the cross-examination of the minor; (4) state any condition or limitation upon the participation of individuals present during the testimony; and (5) state any other condition necessary for taking or presenting the testimony. Provides that the method used must allow the judge, jury, and defendant or juvenile to observe the minor's demeanor as the minor testifies and requires that that defense counsel is physically present, has a full and fair opportunity for cross-examination, and is able to communicate privately with the defendant or juvenile during the remote testimony. Establishes definitions for *criminal proceeding* and *remote testimony*.

Prohibits this statute from (1) being construed to limit the provisions of GS 15A-1225 (superior court exclusion of witnesses); (2) prohibiting the use or application of any other method or procedure authorized or required by statute, common law, or rule for the introduction into evidence of the statements or testimony of a minor in a criminal or noncriminal proceeding; and (3) being construed to require a court, in noncriminal proceedings, to apply this standard or to deviate from a standard or standards authorized by statute, common law, or rule, for allowing the use of remote testimony in noncriminal proceedings.

Effective for any criminal proceeding, as defined in this act, commenced on or after December 1, 2009. States that nothing in this act is to be construed as (1) abrogating any judicial rulings or decisions prior to the effective date that allowed or disallowed witness testimony in any criminal proceeding or (2) abrogating any judicial rulings that prohibit a psychological evaluation of an unwilling witness.

**Intro. by Glazier, Ross, Stam.**

GS 15A

March 2, 2009

**H 192. CHILD WITNESS TESTIMONY/PROCEDURES (NEW).** Filed 2/17/09. House committee substitute makes the following changes to 1st edition.

Defines child as being a minor under the age of 16 at the time of the testimony. Substitutes the term *child* for all occurrences of the term *minor*. Adds a definition of *criminal proceeding*.

Provides that a factor in the court's decision of whether to authorize remote testimony is a determination that the child would suffer serious emotional distress (was, would suffer more than de minimus emotional distress) by testifying in the defendant's presence.

Directs the court to hold an evidentiary hearing to determine whether to allow remote testimony upon (1) motion of a party or (2) the court's own motion, and for good cause shown (was, directed the court to hold an evidentiary hearing upon good cause shown).

Requires hearings conducted under Subchapter II (undisciplined and delinquent juveniles) of GS Chapter 7B and hearings in the superior court division to be recorded (was, provide that the hearing be recorded if it was held in the superior court division).

Clarifies that an order that allows use of remote testimony must state any condition or limitation upon the participation of individuals in the child's presence during the child's testimony (was, upon the participation of individuals present during the testimony). Clarifies that the

appropriate reference for a juvenile alleged to have committed a criminal offense is *juvenile respondent*.

Changes the title to *AN ACT TO ESTABLISH PROCEDURAL REQUIREMENTS FOR CHILD WITNESS TESTIMONY IN CRIMINAL CASES*.

June 30, 2009

**H 192. CHILD WITNESS TESTIMONY/PROCEDURES.** Filed 2/17/09. Senate committee substitute makes the following changes to 3rd edition. Amends proposed GS 15A-1225A to clarify that the court does not have to ensure that a pro se defendant (1) is physically present where the child testifies, (2) has a full and fair opportunity to cross-examine the child witness, and (3) has the ability to communicate privately with the defendant during the remote testimony. Adds a provision providing that the statute does not apply if the defendant is an attorney pro se, unless the defendant has a court-appointed attorney assisting in the defense; in those instances only the court-appointed attorney is allowed in the room with the child during the child's testimony.

July 8, 2009

**H 192. CHILD WITNESS TESTIMONY/PROCEDURES.** Filed 2/17/09. Senate amendment makes the following changes to 4th edition. Renumbers the new statute (Child witnesses; remote testimony) proposed to be added to Article 73 of GS Chapter 15A as GS 15A-1225.1 (was, GS 15A-1225A).

July 27, 2009

**SL 2009-356 (H 192). CHILD WITNESS TESTIMONY/PROCEDURES. AN ACT TO ESTABLISH PROCEDURAL REQUIREMENTS FOR CHILD WITNESS TESTIMONY IN CRIMINAL CASES.** Summarized in *Daily Bulletin* 2/17/09, 3/2/09, 6/30/09, and 7/8/09. Enacted July 27, 2009. Effective December 1, 2009.