

March 24, 2009

H 775. ALT. TESTIMONY/CHILDREN AND ADULTS WITH DISAB. (=S 241). Filed 3/24/09. *TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR CHILDREN AND ADULTS WITH DISABILITIES AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.*

Identical to S 241, filed 2/18/09.

Intro. by England.

GS 8C

July 29, 2009

H 775. ALT. TESTIMONY/CHILDREN AND ADULTS WITH DISAB. Filed 3/24/09. Senate committee substitute makes the following changes to 1st edition. Deletes proposed Rule 616, *Alternative testimony of children and developmentally disabled*, which provided for a court to order the use of closed circuit testimony for witnesses that are either under 16 or developmentally disabled or mentally retarded upon specific findings in civil or criminal actions. Instead, enacts new Rule 616, *Alternative testimony of witnesses with developmental disabilities or mental retardation in civil cases and special proceedings*, to authorize that a person with a developmental disability or mental retardation who is competent to testify may testify by remote testimony in a civil or special proceeding. Requires the court to determine by clear and convincing evidence that (1) a witness would suffer serious emotional distress and (2) the ability of the witness to communicate with the trier of fact would be impaired from testifying in the presence of named party or parties or from testifying in an open forum. Allows the court to hold an evidentiary hearing on that determination upon motion of a party or the court's own motion and for good cause shown. Provides that (1) the hearing is to be recorded unless waived by all parties and (2) the presence of the witness is not required unless ordered by the presiding judge. Specifies what must be included in an order allowing the use of remote testimony. Provides for procedures related to the method of remote testimony including requiring that counsel for all parties be present and have an opportunity for examination and cross-examination. States that nothing in the statute prohibits the use or application of any method or procedure authorized or required by law for the introduction into evidence of statements or testimony of a person with a developmental disability or mental retardation.

Enacts new GS 15A-1225.2 to set forth identical provisions allowing remote testimony in a prosecution of a person charged with violating state criminal law and in any hearing or proceeding conducted under Subchapter II of GS Chapter 7B where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult. Also requires the court to ensure that the defendant or juvenile respondent has the ability to communicate privately with defense counsel during the remote testimony. Specifies that nothing in the statute is to be construed to limit the provisions of GS 15A-1225 (Exclusion of witnesses).

Provides that the act applies to any hearings or trials held on or after December 1, 2009 (was, applied to testimony given on or after December 1, 2009). Specifies that nothing in the act is to be construed to abrogate any judicial rulings or decisions prior to the effective date that allowed or disallowed witness testimony in any criminal proceedings or abrogate any judicial rulings that prohibit a psychological evaluation of an unwilling witness.

Changes the title to *AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND PERSONS WITH MENTAL RETARDATION, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.*

September 1, 2009

SL 2009-514 (H 775). ALTERNATIVE TESTIMONY/CHILDREN AND ADULTS WITH DISABILITIES. *AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND PERSONS WITH MENTAL RETARDATION, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.* Summarized in *Daily Bulletin* 3/24/09 and 7/29/09. Enacted August 26, 2009. Effective December 1, 2009.

