

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

2

HOUSE BILL 192  
Corrected Copy 2/19/09

Short Title: Child Witness Testimony/Codify Crim. Law. (Public)

Sponsors: Representatives Ross, Stam, Glazier (Primary Sponsors); M. Alexander, Cotham, E. Floyd, Insko, and Lucas.

Referred to: Judiciary I.

February 18, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO CODIFY NORTH CAROLINA LAW ON CHILD WITNESS TESTIMONY IN  
3 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. Minor witnesses; remote testimony.**

8 (a) Definitions.

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

14 (2) Remote testimony. – A method by which a minor witness testifies in a  
15 criminal proceeding outside of the physical presence of the defendant.

16 (b) Remote testimony authorized. – In a criminal proceeding, a minor who has been  
17 found competent to testify may testify, under oath or affirmation, other than in an open forum  
18 when the court determines:

19 (1) That the minor would suffer more than de minimus emotional distress, not  
20 by the open forum in general, but by testifying in the defendant's presence,  
21 and

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

24 (c) Hearing procedure. – Upon good cause shown, the court shall hold an evidentiary  
25 hearing to determine whether to allow remote testimony. The hearing shall be conducted on  
26 the record if held in the Superior Court division. The presence of the minor is not required at  
27 the hearing unless ordered by the presiding judge.

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

31 (1) State the method by which the minor is to testify.

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

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



1           (4)    State any condition or limitation upon the participation of individuals present  
2                during the testimony.

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

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

11       (f)    Nonexclusive procedure and standard. – Nothing in this section shall:

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

16           (2)   Be construed to require a court, in noncriminal proceedings, to apply the  
17                standard set forth in G.S. 15A-1225A(b), or to deviate from a standard or  
18                standards authorized by statute, common law, or rule, for allowing the use of  
19                remote testimony in noncriminal proceedings."

20       **SECTION 2.** This act becomes effective December 1, 2009, and applies to any  
21 criminal proceeding, as defined in this act, commenced on or after that date. Nothing in this act  
22 shall be construed to (i) abrogate any judicial rulings or decisions prior to the effective date of  
23 this act that allowed or disallowed witness testimony in any criminal proceeding or (ii) abrogate  
24 any judicial rulings that prohibit a psychological evaluation of an unwilling witness.