

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE DRH70065-TC-1A* (09/23)

Short Title: Alt. Testimony/Children and Adults with Disab.

(Public)

Sponsors: Representative England.

Referred to:

A BILL TO BE ENTITLED

AN ACT 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.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 8C of the General Statutes is amended by adding
a new section to read:

"Rule 616. Alternative testimony of children and developmentally disabled.

(a) Closed Circuit Testimony Permitted. – When a witness is either (i) under the age of
16 or (ii) developmentally disabled or mentally retarded, the court may, on its own motion or at
the request of a party, order that witness's testimony be taken by closed circuit television in any
action, whether civil or criminal in nature.

(b) Finding of Emotional Harm Required in Criminal Actions. – Closed circuit
testimony may be permitted in criminal actions only if the court finds that there is a substantial
likelihood that the witness will suffer emotional harm such that the witness could not
reasonably communicate with the finder of fact if required to testify in open court. Such a
finding shall be based upon clear and convincing evidence, which may include expert
testimony.

(c) Finding of Best Interests of Witness in Civil Actions. – Closed circuit testimony
may be permitted in civil actions only if the court finds by a preponderance of the evidence that
permitting the witness to testify by closed circuit television is necessary to serve the best
interests of the witness or enable the witness to communicate with the finder of fact. In making
this finding, the court shall consider:

(1) The nature of the proceeding;

(2) The age and maturity of the witness;

(3) The relationship of the witness to the parties in the proceeding;

(4) The nature and degree of emotional trauma that the witness may suffer in
testifying; and

(5) Any other relevant factor.

(d) Definitions. – The following definitions apply in this section:

(1) Closed circuit testimony. – Transmission of witness testimony by closed
circuit television which enables the defendant to observe and view the
testimony and provides, by any appropriate electronic means, the defendant's



1 right to assistance of counsel, including the right to immediate and direct
2 communication with counsel during cross-examination.

3 (2) Developmentally disabled. – A person with a severe, chronic disability
4 which:

5 a. Is attributable to a mental or physical impairment or combination of
6 mental and physical impairments, including cerebral palsy, epilepsy,
7 autism, or other neurological conditions;

8 b. Is manifested before the person attains age 22, unless the disability is
9 caused by a traumatic head injury and is manifested after age 22;

10 c. Is likely to continue indefinitely;

11 d. Results in substantial functional limitations in three or more of the
12 following areas of major life activity: self-care, receptive and
13 expressive language, capacity for independent living, learning,
14 mobility, self-direction and economic self-sufficiency; and

15 e. Reflects the person's need for a combination and sequence of special
16 interdisciplinary or generic care, treatment, or other services which
17 are of a lifelong or extended duration and are individually planned
18 and coordinated; or

19 f. When applied to children from birth through four years of age, may
20 be evidenced as a developmental delay.

21 (3) Mentally retarded. – A person with significantly subaverage general
22 intellectual functioning existing concurrently with deficits in adaptive
23 behavior and manifested before age 22."

24 **SECTION 2.** This act becomes effective December 1, 2009, and applies to any
25 testimony given on or after that date.