

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 775*

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

Sponsors: Representatives England, M. Alexander, Parmon (Primary Sponsors); Brisson, Faison, Harrison, Insko, Lucas, and Womble.

Referred to: Juvenile Justice, if favorable, Judiciary III.

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR CHILDREN
3 AND ADULTS WITH DISABILITIES AS RECOMMENDED BY THE JOINT STUDY
4 COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.

5 The General Assembly of North Carolina enacts:

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

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

9 (a) Closed Circuit Testimony Permitted. – When a witness is either (i) under the age of
10 16 or (ii) developmentally disabled or mentally retarded, the court may, on its own motion or at
11 the request of a party, order that witness's testimony be taken by closed circuit television in any
12 action, whether civil or criminal in nature.

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

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

24 (1) The nature of the proceeding;

25 (2) The age and maturity of the witness;

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

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

29 (5) Any other relevant factor.

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

31 (1) Closed circuit testimony. – Transmission of witness testimony by closed
32 circuit television which enables the defendant to observe and view the
33 testimony and provides, by any appropriate electronic means, the defendant's
34 right to assistance of counsel, including the right to immediate and direct
35 communication with counsel during cross-examination.



- 1 (2) Developmentally disabled. – A person with a severe, chronic disability
2 which:
3 a. Is attributable to a mental or physical impairment or combination of
4 mental and physical impairments, including cerebral palsy, epilepsy,
5 autism, or other neurological conditions;
6 b. Is manifested before the person attains age 22, unless the disability is
7 caused by a traumatic head injury and is manifested after age 22;
8 c. Is likely to continue indefinitely;
9 d. Results in substantial functional limitations in three or more of the
10 following areas of major life activity: self-care, receptive and
11 expressive language, capacity for independent living, learning,
12 mobility, self-direction and economic self-sufficiency; and
13 e. Reflects the person's need for a combination and sequence of special
14 interdisciplinary or generic care, treatment, or other services which
15 are of a lifelong or extended duration and are individually planned
16 and coordinated; or
17 f. When applied to children from birth through four years of age, may
18 be evidenced as a developmental delay.
19 (3) Mentally retarded. – A person with significantly subaverage general
20 intellectual functioning existing concurrently with deficits in adaptive
21 behavior and manifested before age 22."

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