



SENATE BILL 51: Kayla's Act: Protecting Dom. Violence Victims.

2023-2024 General Assembly

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| Committee: Senate Rules and Operations of the Senate | Date: March 22, 2023 |
| Introduced by: Sens. Britt, Craven, Barnes | Prepared by: Robert Ryan |
| Analysis of: Second Edition | Staff Attorney |

OVERVIEW: *Senate Bill 51 does the following:*

- *Adds a new hearsay exception to allow an out of court statement at trial when a witness is unavailable to testify, and the opposing party caused the witness to be unavailable.*
- *Increases the statute of limitations for misdemeanor crimes of domestic violence from two years to 10 years.*
- *Authorizes domestic violence victims to testify in criminal trials by remote testimony if the court makes certain findings about the witness.*

CURRENT LAW AND BILL ANALYSIS:

Section 1.

Hearsay is an out of court statement made by a person offered into evidence in court to prove the truth of the matter asserted. G.S. 8C-1, Rule 801(c). Hearsay is not admissible evidence unless an exception applies. G.S. 8C-1, Rule 802. There are currently 23 hearsay exceptions that would allow hearsay to be admitted into evidence even if the witness was available to testify at trial. G.S. 8C-1, Rule 803. There are currently five hearsay exceptions that only apply when a witness is unavailable to testify at trial.

Section 1 of the bill would add a new hearsay exception for when a witness is unavailable to testify as a witness. The exception would allow a hearsay statement to be admitted into evidence if the statement was offered against a party that wrongfully caused the unavailability of the witness with the intent to prevent the witness from testifying.

Section 2.

G.S. 15-1 provides that the statute of limitation for the prosecution of most misdemeanors is two years between the commission of the offense and the defendant being charged. (Misdemeanors with malice as an element do not have any time limit.) There are currently five listed misdemeanor crimes that have a 10-year statute of limitations, they are: failure to report abuse, sexual battery, indecent liberties between children, child abuse, and failures to report crimes against juveniles.

Section 2 of the bill would make misdemeanor crimes of domestic violence subject to the 10-year statute of limitations rather than the two-year statute of limitations.

Section 3.

G.S. 15A-1225.1 provides that a child witness under the age of 16 may testify by remote testimony if a court determines certain criteria apply. G.S. 15A-1225.2 provides that a witness with an intellectual or developmental disability may testify by remote testimony if a court determines certain criteria apply. Both statutes contain substantially similar criteria that upon a motion by a party or the court, and for good cause

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shown, the court may hold a hearing to allow an eligible witness to testify by video remote testimony, outside the physical presence of the defendant, if the court determines that: (i) the witness would suffer serious emotional distress by testifying in the defendant's presence, and (ii) that the witness's ability to communicate would be impaired.

G.S. 15A-1225.3 provides that in Superior Court a forensic analyst may remotely testify if the State notifies the defendant that it intends to have this witness remotely testify and the defendant does not file a timely objection. (The defendant does not have an objection right in District Court.)

Section 3 of the bill would authorize domestic violence victims to testify by remote testimony by using substantially the same criteria that exists for child witnesses (G.S. 15A-1225.1) and witnesses with intellectual disabilities (G.S. 15A-1225.2). Specifically, section 3 of the bill would create G.S. 15A-1225.4, and the following sections of that new law would do the following:

Subsection (a): Contains definitions, including for "Domestic violence victim witness" and "Remote testimony." Remote testimony means that the domestic violence victim witness testifies outside the physical presence of the defendant.

Subsection (b): Authorizes the remote testimony of a domestic violence victim witness if either: (i) the defendant does not object to such testimony after receiving notice, or (ii) the court makes a finding that the remote testimony is proper under this section.

Subsection (c): Requires that if the State wants to have a domestic violence victim witness testify by remote testimony the State must first notify the defendant and allow the defendant the opportunity to object. If the defendant does not timely object, the remote testimony is allowed to proceed. If the defendant does timely object, and the State still wishes to pursue the remote testimony, the State must proceed to a court hearing to determine if the remote testimony will be allowed.

Subsection (d): Allows a court to authorize a domestic violence victim witness to testify by remote testimony over a defendant's objection if the court determines each of the following:

- The witness would suffer serious emotional distress by testifying in the defendant's presence.
- The witness's ability to communicate with the trier of fact would be impaired.

Subsection (e): Provides the court procedure for holding an evidentiary hearing to determine whether remote testimony by a domestic violence victim witness shall be allowed. The domestic violence victim witness is not required to attend this hearing unless ordered by the judge.

Subsection (f): Requires that when the court rules on whether to allow remote testimony or not, the court must state findings of fact and conclusions of law and enter an order listing certain criteria about the remote testimony.

Subsection (g): Contains the requirements for the remote testimony of the domestic violence victim witness when the witness testifies at trial. These requirements include the following:

- The judge, jury, and defendant must be able to observe the demeanor of the domestic violence victim witness as if the witness were in the court.
- The judge, jury, defendant, and domestic violence victim witness can see and hear each other in real time.
- The location where the domestic violence victim witness will testify from must be agreed to by the defendant and the State or approved by the court.

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- The defendant and the State must be allowed to have two representatives (in addition to the prosecutor and defense counsel) who are approved by the court present at the location where the domestic violence victim witness is testifying.
- That defense counsel (except a pro se defendant) must be physically present where the domestic violence victim is testifying and has a full and fair opportunity to cross-examine the witness.

Subsection (h): Clarifies that this law does not prohibit the use of any other existing laws for the introduction of evidence or apply in noncriminal proceedings.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." A similar right is set out in Article 1, Section 23 of the NC Constitution, which provides that "In all criminal prosecutions, every person charged with crime has the right...to confront the accusers and witnesses with other testimony." In Maryland v. Craig¹, the United States Supreme Court ruled that testimony by closed circuit television would not necessarily violate that right under certain conditions. In Craig, the Court upheld a Maryland statute permitting the use of one-way closed circuit testimony for a child witness alleged to be the victim of child abuse when the trial court had determined that the testimony by the child victim in the courtroom would result in the child suffering emotional distress such that the child could not reasonably communicate. The North Carolina Court of Appeals has subsequently followed Craig in examining the issue of remote testimony in the cases of In re Stradford², and State v. Jackson³.

¹ 497 U.S. 836 (1990).

² 119 N.C. App. 654 (1995) (holding that the rationale of Craig applies to the Confrontation Clause under the North Carolina constitution.).

³ 216 N.C. App. 238 (2011) (holding that allowing a child witness to testify remotely pursuant to G.S. 15A-1225.1 was constitutional by using the criteria provided by the US Supreme Court in Craig.).