

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 39

Short Title: Kayla's Act: Protecting Dom. Violence Victims. (Public)

Sponsors: Representatives Lowery, B. Jones, Miller, and Carson Smith (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

February 2, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY LAWS PERTAINING TO DOMESTIC VIOLENCE, TO BE KNOWN
3 AS KAYLA'S ACT: PROTECTING VICTIMS OF DOMESTIC VIOLENCE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 8C-1, Rule 804(b), reads as rewritten:

6 "(b) Hearsay exceptions. – The following are not excluded by the hearsay rule if the
7 declarant is unavailable as a witness:

8 ...

9 (6) Statement Offered Against a Party That Wrongfully Caused the Declarant's
10 Unavailability. – A statement offered against a party that wrongfully caused,
11 or acquiesced in wrongfully causing, the declarant's unavailability as a witness
12 and did so intending that result."

13 **SECTION 1.(b)** This section is effective when it becomes law and applies to trials
14 beginning on or after that date.

15 **SECTION 2.(a)** G.S. 15-1(b) reads as rewritten:

16 "(b) Notwithstanding subsection (a) of this section, the following misdemeanors shall be
17 charged within 10 years of the commission of the crime:

18 ...

19 (6) Those that would require a judge to determine the conditions of pretrial release
20 under G.S. 15A-534.1(a)."

21 **SECTION 2.(b)** This section is effective when it becomes law and applies to acts
22 committed either:

23 (1) On or after that date.

24 (2) Before that date, provided that the statute of limitations for the act did not
25 expire prior to that date.

26 **SECTION 3.(a)** Article 73 of Chapter 15A of the General Statutes is amended by
27 adding a new section to read:

28 "**§ 15A-1225.4. Domestic violence victim witnesses; remote testimony.**

29 (a) Definitions:

30 (1) Criminal proceeding. – Any hearing or trial in a prosecution of a person
31 charged with violating a criminal law of this State.

32 (2) Domestic violence. – All cases in which the defendant is charged with assault
33 on, stalking, communicating a threat to, or committing a crime provided in
34 Article 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse
35 or former spouse, a person with whom the defendant lives or has lived as if



1 married, or a person with whom the defendant is or has been in a dating
2 relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass,
3 or with violation of an order entered pursuant to Chapter 50B, Domestic
4 Violence, of the General Statutes.

5 (3) Domestic violence victim witness. – An alleged victim in a criminal
6 proceeding involving a crime of domestic violence.

7 (4) Remote testimony. – A method by which a domestic violence victim witness
8 testifies in a criminal proceeding outside of the physical presence of the
9 defendant.

10 (b) Remote Testimony Authorized. – In a criminal proceeding, a domestic violence
11 victim witness who has been found competent to testify may testify, under oath or affirmation,
12 other than in an open forum if either of the following circumstances occurs:

13 (1) The defendant does not object pursuant to subsection (c) of this section.

14 (2) The court determines that remote testimony is appropriate pursuant to
15 subsection (d) of this section.

16 (c) Notice and Waiver. – In any criminal proceeding, the testimony of a domestic
17 violence victim witness shall be permitted by remote testimony if each of the following
18 circumstances occurs:

19 (1) The State notifies the attorney of record for the defendant, or the defendant if
20 that person has no attorney, at least 15 business days before the proceeding at
21 which the remote testimony would be used of its intention to allow the
22 domestic violence victim witness to testify remotely.

23 (2) The defendant's attorney of record, or the defendant if that person has no
24 attorney, fails to file a written objection with the court, with a copy to the
25 State, at least five business days before the proceeding at which the remote
26 testimony will be used that the defendant objects to the domestic violence
27 victim witness testifying remotely.

28 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to
29 file a written objection as provided in this subsection, then the objection shall be deemed waived
30 and the domestic violence victim witness shall be allowed to testify remotely pursuant to the
31 standards set forth in subsection (g) of this section.

32 The court shall make written findings of any waiver under this subsection, including at a
33 minimum the date and manner of notice provided pursuant to subdivision (1) of this subsection
34 and the judicial determination that the defendant or the defendant's attorney, whichever is
35 applicable, failed to timely object pursuant to subdivision (2) of this subsection.

36 (d) Authorized by Court Over Objection. – If a defendant's attorney of record, or the
37 defendant, objects to remote testimony as provided for in subsection (c) of this section, the court
38 may authorize remote testimony over the objection if the court determines each of the following:

39 (1) That the domestic violence victim witness would suffer serious emotional
40 distress, not by the open forum in general, but by testifying in the defendant's
41 presence.

42 (2) That the domestic violence victim's ability to communicate with the trier of
43 fact would be impaired.

44 (e) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good
45 cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote
46 testimony. Hearings in the superior court division shall be recorded. The presence of the domestic
47 violence victim witness is not required at the hearing unless ordered by the presiding judge.

48 (f) Order. – An order allowing or disallowing the use of remote testimony pursuant to
49 subsection (e) of this section shall state the findings of fact and conclusions of law that support
50 the court's determination. An order allowing the use of remote testimony shall at a minimum do
51 each of the following:

- 1 (1) State the method by which the domestic violence victim witness is to testify.
2 (2) List any individual or category of individuals allowed to be in, or required to
3 be excluded from, the presence of the domestic violence victim witness during
4 the testimony.
5 (3) State any special conditions necessary to facilitate the cross-examination of
6 the domestic violence victim witness.
7 (4) State any condition or limitation upon the participation of individuals in the
8 domestic violence victim witness's presence during the witness's testimony.
9 (5) State any other condition necessary for taking or presenting the testimony.
10 (g) Remote Testimony. – The method used for remote testimony permitted under this
11 section shall do each of the following:
12 (1) Allow the judge, jury, and defendant to observe the demeanor of the domestic
13 violence victim witness as the witness testifies in a similar manner as if the
14 witness were in the open forum.
15 (2) Allow the judge, jury, defendant, and domestic violence victim witness to see
16 and hear one another in real time.

17 The court shall ensure that the defense counsel, except a pro se defendant, is physically
18 present where the domestic violence victim witness testifies, has a full and fair opportunity for
19 cross-examination of the domestic violence victim witness, and has the ability to communicate
20 privately with the defendant during the remote testimony. If the defendant is an attorney pro se,
21 the court shall ensure that the defendant has a full and fair opportunity for cross-examination of
22 the domestic violence victim witness. Nothing in this section shall be construed to limit the
23 provisions of G.S. 15A-1225.

24 (h) Nonexclusive Procedure and Standard. – Nothing in this section shall:

- 25 (1) Prohibit the use or application of any other method or procedure authorized or
26 required by statute, common law, or rule for the introduction into evidence of
27 the statements or testimony of a domestic violence victim in a criminal or
28 noncriminal proceeding.
29 (2) Be construed to require a court, in noncriminal proceedings, to apply the
30 standard set forth in subsection (g) of this section or to deviate from a standard
31 or standards authorized by statute, common law, or rule for allowing the use
32 of remote testimony in noncriminal proceedings."

33 **SECTION 3.(b)** G.S. 7A-49.6(i) reads as rewritten:

34 "(i) This section is not intended to limit the court's authority to receive remote testimony
35 pursuant to statutes that otherwise permit it, including G.S. 15A-1225.1, 15A-1225.2,
36 15A-1225.3, 15A-1225.4, 20-139.1, 8C-1, Rule 616, 50A-111, and 52C-3-315(f)."

37 **SECTION 3.(c)** This section is effective when it becomes law and applies to
38 testimony provided on or after that date.

39 **SECTION 4.(a)** Chapter 50B of the General Statutes is amended by adding a new
40 section to read:

41 "**§ 50B-10. Recording required.**

42 All district court trials and proceedings held pursuant to this Chapter, whether before a judge
43 or magistrate, shall be recorded in a manner that memorializes the audio and visual participation
44 of each party to the trial or proceeding."

45 **SECTION 4.(b)** This section becomes effective December 1, 2023, and applies to
46 trials or proceedings occurring on or after that date.

47 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
48 law.