

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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SENATE BILL 51  
Judiciary Committee Substitute Adopted 3/21/23

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

(Public)

Sponsors:

Referred to:

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  
36 married, or a person with whom the defendant is or has been in a dating



1 relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass,  
2 or with violation of an order entered pursuant to Chapter 50B, Domestic  
3 Violence, of the General Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (e) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good  
44 cause shown, the court shall hold a separate evidentiary hearing on a date prior to the proceeding  
45 at which the remote testimony is proposed to be allowed 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 physical location where the domestic violence victim witness  
18        testifies has been mutually agreed to by both the defendant and the State or approved by the court.  
19        The court shall ensure that both the defendant and the State shall be allowed to have at least two  
20        representatives approved by the court, in addition to the prosecutor and defense counsel, present  
21        at the location where the domestic violence victim witness is testifying. The court shall ensure  
22        that the defense counsel, except a pro se defendant, is physically present where the domestic  
23        violence victim witness testifies, has a full and fair opportunity for cross-examination of the  
24        domestic violence victim witness, and has the ability to communicate privately with the  
25        defendant during the remote testimony. If the defendant is an attorney pro se, the court shall  
26        ensure that the defendant has a full and fair opportunity for cross-examination of the domestic  
27        violence victim witness. Nothing in this section shall be construed to limit the provisions of  
28        G.S. 15A-1225.

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

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

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

39        (i)    This section is not intended to limit the court's authority to receive remote testimony  
40        pursuant to statutes that otherwise permit it, including G.S. 15A-1225.1, 15A-1225.2,  
41        15A-1225.3, 15A-1225.4, 20-139.1, 8C-1, Rule 616, 50A-111, and 52C-3-315(f)."

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

44        **SECTION 4.** Except as otherwise provided, this act is effective when it becomes  
45        law.