

# JUDICIAL PROOF

## CHAPTER 232

### HOUSE BILL NO. 1387

(Representatives Roers Jones, Guggisberg, Heinert, Kading)  
(Senators Armstrong, Poolman)

AN ACT to create and enact section 31-04-04.2 of the North Dakota Century Code, relating to use of audiovisual equipment for the testimony of a minor or disabled adult witness.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 31-04-04.2 of the North Dakota Century Code is created and enacted as follows:

#### **31-04-04.2. Use of audiovisual equipment for the testimony of minors or disabled adult witnesses.**

1. At the time of trial, if the witness is a minor or is a disabled adult as defined in section 12.1-31-07, the court may order the witness's testimony be taken in a room other than the courtroom and be televised by audiovisual equipment in the courtroom if:
  - a. The testimony is taken during the proceeding;
  - b. The judge determines the testimony of the witness in the presence of the defendant would result in the witness suffering serious emotional distress or trauma that would impact the ability of the witness to reasonably communicate; and
  - c. Audiovisual equipment is available.
2. To obtain an order authorizing the use of audiovisual equipment for testimony by a minor or disabled adult witness, the party shall file a written motion with the court no later than fourteen days before the trial.
3. Only the prosecuting attorney, attorney for the defendant, guardian ad litem, and the judge may question the minor or disabled adult witness.
4. The following individuals may be in the room with the witness when the minor or disabled adult provides testimony:
  - a. The prosecuting attorney;
  - b. The guardian ad litem;
  - c. The judge while administering the oath;

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- d. The operators of the audiovisual equipment;
  - e. By order of the court, an individual whose presence contributes to the welfare and well-being of the witness, including an individual who has dealt with the witness in a therapeutic setting; and
  - f. An attorney representing the defendant.
5. The judge and defendant must be allowed to communicate with the individuals in the room where the witness is testifying through audiovisual equipment or by meeting outside the presence of the witness.
  6. This section does not preclude the presence of both the witness and the defendant in the courtroom at the same time for purposes of identifying the defendant.

Approved April 17, 2017

Filed April 17, 2017