

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 539

Short Title: Access to Elderly Adults. (Public)

Sponsors: Representatives Farmer-Butterfield, Howard, Earle, and Setzer (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Aging, if favorable, Judiciary I

April 3, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT ESTABLISHING A PROCESS TO ENSURE ACCESS TO ELDERLY ADULTS  
3 BY THEIR RELATIVES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

6 **"Chapter 35C.**

7 **"Access to Elderly Adults.**

8 **"§ 35C-1. Definitions.**

9 The following definitions apply in this Chapter:

- 10 (1) Elderly adult. – An individual 65 years of age or older, who is not a resident  
11 of a facility as defined in Section 483.5 of Title 42 of the Code of Federal  
12 Regulations, and who has been either:  
13 a. Adjudicated incompetent.  
14 b. Diagnosed with Alzheimer's disease or dementia.  
15 (2) Isolation. – Acts which prevent an elderly adult from receiving mail,  
16 electronic mail, telephone calls, personal contact, or personal  
17 communication from relatives.  
18 (3) Petitioner. – An individual bringing an action under this Chapter.  
19 (4) Relative. – The spouse, child, or sibling of an elderly adult.  
20 (5) Respondent. – An individual alleged to be keeping an elderly adult in  
21 isolation.

22 **"§ 35C-2. Petition for access, hearing, service.**

23 (a) A relative of an elderly adult may file a petition with the clerk of superior court in  
24 the county in which the elderly adult resides requesting access, including the opportunity to  
25 establish visitation or communication, to an elderly adult kept in isolation.

26 (b) Except as set forth in subsection (c) of this section, the clerk shall schedule a  
27 hearing on the petition no later than 30 days after the date the petition is filed. A copy of the  
28 petition and an order directing the respondent to appear at the hearing shall be served, in any  
29 manner permissible under G.S. 1A-1, Rule 5, on the respondent at least 14 days prior to the  
30 date of the hearing.

31 (c) If a petition states the elderly adult's health is in significant decline or the elderly  
32 adult's death may be imminent, the clerk shall conduct an emergency hearing as soon as  
33 practicable, but not later than 10 days after the date the petition is filed. A copy of the petition  
34 and an order directing the respondent to appear at the emergency hearing shall be served, in any



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1 manner permissible under G.S. 1A-1, Rule 5, on the respondent as soon as practicable after the  
2 emergency hearing is scheduled.

3 **"§ 35C-3. Order.**

4 (a) In determining whether to issue an order granting the petitioner access to the elderly  
5 adult, the clerk shall consider all of the following:

6 (1) Whether the respondent's past acts kept the elderly adult in isolation.

7 (2) Whether any protective orders have been issued against the petitioner to  
8 protect the elderly adult.

9 (3) Whether a court or state agency has found the petitioner abused, exploited,  
10 or neglected the elderly adult.

11 (4) Whether contact by the petitioner should be limited to situations in which a  
12 third person, selected by the court, is present.

13 (5) Whether the elderly adult desires contact with the petitioner.

14 (6) The best interest of the elderly adult.

15 (7) Any other fact the clerk deems material.

16 (b) If, after a hearing under G.S. 35C-2, and a consideration of the factors listed in  
17 subsection (a) of this section, the clerk determines the petitioner has established, by a  
18 preponderance of the evidence, that the petitioner should be granted access to the elderly adult,  
19 the clerk shall issue an order setting forth the frequency, time, place, location, and any other  
20 terms of access to the elderly adult.

21 (c) If the elderly adult is a resident of a facility as defined in section 483.5 of Title 42 of  
22 the Code of Federal Regulations, no order shall issue under this section, and section 483.10 of  
23 Title 42 of the Code of Federal Regulations shall apply.

24 **"§ 35C-4. Appeal from clerk's order.**

25 Any party may appeal an order issued by the clerk for a de novo hearing in superior court in  
26 accordance with G.S. 1-301.2(e)."

27 **SECTION 2.** This act is effective when it becomes law.