

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH50483-LH-210 (3/22)

Short Title: DNA Evidence/Preserve & Access by Defendant. (Public)

Sponsors: Representatives Glazier and Ross (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEFENDANT ACCESS TO DNA TESTING OF EVIDENCE WHEN CURRENT TESTING PROCEDURES ARE MORE ACCURATE THAN PAST TESTING PROCEDURES, TO AMEND THE LAW GOVERNING THE PRESERVATION AND DISPOSITION OF POSSIBLE DNA EVIDENCE AND POSTCONVICTION DNA TESTING, AND TO PROVIDE A RIGHT OF APPEAL TO A DEFENDANT FOR DENIAL OF A MOTION TO CONDUCT DNA TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-267(c) reads as rewritten:

"(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court may order the SBI to perform DNA testing and DNA Database comparisons of any biological material collected but not DNA tested in connection with the case in which the defendant is charged upon a showing of all of the following:

- (1) That the biological material is relevant to the investigation.
- (2) That the biological material was not previously DNA ~~tested~~tested or that more accurate testing procedures are now available that were not available at the time of previous testing.
- (3) That the testing is material to the defendant's defense."

SECTION 2. G.S. 15A-268 reads as rewritten:

"§ 15A-268. Preservation of samples of biological materials.

(a) As used in this section, the term "biological evidence" includes the contents of a sexual assault examination kit; or any item that contains blood, semen, hair, saliva, skin tissue, or other identifiable biological material, whether that material is catalogued separately (for example on a slide, swab, or in a test tube) or is present on other evidence (including clothing, ligatures, bedding, or other household material, drinking cups, and cigarettes.)

1 ~~(a)(a1)~~ Notwithstanding any other provision of law and subject to subsection (b)
2 of this section, a governmental entity ~~that collects evidence containing DNA in the~~
3 ~~course of a criminal investigation in custody of evidence~~ shall preserve a sample of the
4 ~~evidence collected for the period of time a defendant convicted of a felony is~~
5 ~~incarcerated in connection with that case. The governmental entity may determine how~~
6 ~~the evidence is retained pursuant to this section, provided that the evidence is retained in~~
7 ~~a condition suitable for DNA testing. any physical evidence that is reasonably likely to~~
8 ~~contain any biological evidence collected in the course of a criminal investigation or~~
9 ~~prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent~~
10 ~~contamination or degradation of biological evidence contained thereon, subject to a~~
11 ~~continuous chain of custody, and securely retained with sufficient official~~
12 ~~documentation to locate the evidence.~~

13 (a2) The evidence described by subsection (a1) of this section shall be preserved
14 for the following period:

- 15 (1) For convictions in which the death penalty is imposed, until execution.
- 16 (2) For convictions involving a violent felony, during incarceration,
17 including any period of mandatory supervised release or registration
18 for the offense.
- 19 (3) For convictions of any felony for which the defendant's genetic profile
20 may be taken by a law enforcement agency and included in the State
21 DNA database, for a period of seven years.

22 (b) The governmental entity ~~may dispose of the sample of evidence containing~~
23 ~~DNA preserved required to preserve evidence pursuant to subsection (a)(a1) of this~~
24 ~~section before the may petition the court for an order allowing for disposition of the~~
25 ~~evidence prior to the expiration of the period of time described in subsection (a)-(a2) of~~
26 ~~this section if all of the following conditions are met:~~

- 27 (1) The governmental entity sent notice of its intent to dispose of the
28 ~~sample of evidence~~ to the district attorney in the county in which the
29 conviction was obtained.
- 30 (2) The district attorney gave to each of the following persons written
31 notification of the intent of the ~~entity~~ governmental entity to dispose of
32 the sample of evidence: any defendant convicted of a felony who is
33 currently incarcerated in connection with the case, the ~~current~~
34 defendant's current counsel of record, the Office of Indigent Defense
35 Services, and the Attorney General. The notice shall be consistent with
36 the provisions of this section, and the district attorney shall send a
37 copy of the notice to the governmental entity. Delivery of written
38 notification from the district attorney to the defendant was effectuated
39 by the district attorney transmitting the written notification to the
40 superintendent of the correctional facility where the defendant was
41 assigned at the time and the superintendent's personal delivery of the
42 written notification to the defendant. Certification of delivery by the
43 superintendent to the defendant in accordance with this subdivision
44 was in accordance with subsection (c) of this section.

- 1 (3) The written notification from the district attorney specified the
2 following:
3 a. That the governmental entity would destroy the sample of
4 evidence collected in connection with the case unless the
5 governmental entity received a written request that the sample
6 of evidence not be destroyed.
7 b. The address of the governmental entity where the written
8 request was to be sent.
9 c. That the written request must be received by the governmental
10 entity within 90 days of the date of receipt by the defendant of
11 the district attorney's written notification.
12 d. That the written request must ask that the material not be
13 destroyed or disposed of for one of the following reasons:
14 1. The case is currently on appeal.
15 2. The case is currently in postconviction proceedings.
16 3. The defendant will file within 180 days of the date of
17 receipt by the defendant of the district attorney's written
18 notification a motion for DNA testing pursuant to
19 G.S. 15A-269, that is followed within 180 days of
20 sending the request that the sample of evidence not be
21 destroyed or disposed of, by a motion for DNA testing
22 pursuant to G.S. 15A-269, unless a request for extension
23 is requested by the defendant and agreed to by the
24 governmental entity in possession of the evidence.
25 (4) The governmental entity did not receive a written request in
26 compliance with the conditions set forth in sub-subdivision (3)d. of
27 this subsection within 90 days of the date of receipt by the defendant
28 of the district attorney's written notification.

29 (c) Upon receiving a written notification from a district attorney in accordance
30 with subdivision (b)(3) of this section, the superintendent shall personally deliver the
31 written notification to the defendant. Upon effectuating personal delivery on the
32 defendant, the superintendent shall sign a sworn written certification that the written
33 notification had been delivered to the defendant in compliance with this subsection
34 indicating the date the delivery was made. The superintendent's certification shall be
35 sent by the superintendent to the governmental entity that intends to dispose of the
36 sample of evidence. The governmental entity may rely on the superintendent's
37 certification as evidence of the date of receipt by the defendant of the district attorney's
38 written notification.

39 (d) After a hearing, the court may enter an order authorizing the governmental
40 entity to dispose of the evidence if the court determines by the preponderance of the
41 evidence that the evidence:

- 42 (1) Has no significant value for biological analysis and should be returned
43 to its rightful owner, destroyed, used for training purposes, or
44 otherwise disposed of as provided by law; or

1 (2) Has no significant value for biological analysis and is of a size, bulk,
2 or physical characteristic not usually retained by the governmental
3 entity and cannot practically be retained by the governmental entity; or

4 (3) May have value for biological analysis but is of a size, bulk, or
5 physical characteristic not usually retained by the governmental entity
6 and cannot practically be retained by the governmental entity.

7 (e) The court order allowing the disposition of the evidence pursuant to this
8 section may require the governmental entity to take reasonable measures to remove or
9 preserve portions of evidence suitable for future biological testing or may provide the
10 defendant an opportunity to take reasonable measures to preserve the evidence.

11 (f) An order regarding the disposition of evidence pursuant to this section shall
12 be a final and appealable order. No evidence shall be disposed of until 30 days after the
13 order is entered, and if a notice of appeal is filed, no evidence shall be disposed of
14 during the pendency of the appeal."

15 **SECTION 3.** G.S. 15A-269(b) reads as rewritten:

16 "(b) The court shall grant the motion for DNA testing of the evidence upon its
17 determination that:

18 (1) The conditions set forth in subdivisions (1), (2), and (3) of subsection
19 (a) of this section have been met; and

20 (2) If the DNA testing being requested had been conducted on the
21 evidence, there exists a reasonable probability that the verdict would
22 have been more favorable to the ~~defendant~~ defendant; and

23 (3) The defendant has signed a sworn affidavit of innocence."

24 **SECTION 4.** Article 13 of Chapter 15A of the General Statutes is amended
25 by adding a new section to read:

26 "**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

27 The defendant may appeal from an order denying the defendant's motion for DNA
28 testing under this Article. The right to appeal under this section includes an
29 interlocutory appeal."

30 **SECTION 5.** This act becomes effective December 1, 2007.