

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-539
HOUSE BILL 1500**

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 and there is a reasonable possibility that the result would have been different.
- (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~~evidence.

(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 on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or other evidence.

~~(a)(a1)~~Notwithstanding any other provision of law and subject to subsection (b) of this section, a governmental entity ~~that collects evidence containing DNA in the course of a criminal investigation in custody of evidence shall preserve a sample of the evidence collected for the period of time a defendant convicted of a felony is incarcerated in connection with that case. The governmental entity may determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.~~any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or

prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

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

- (1) For conviction resulting in a sentence of death, until execution.
- (2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), the evidence shall be preserved during the period of incarceration except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.
- (3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration and any period of mandatory supervised release or probation.
- (4) For conviction of any felony not governed by subdivisions (1), (2), or (3) of this subsection for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, the evidence shall be preserved for a period of seven years from the date of conviction except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.

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

- (1) The governmental entity sent notice of its intent to dispose of the ~~sample of~~ evidence to the district attorney in the county in which the conviction was obtained.
- (2) The district attorney gave to each of the following persons written notification of the intent of the ~~entity~~ governmental entity to dispose of the ~~sample of~~ evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the ~~current~~ defendant's current counsel of record, the Office of Indigent Defense Services, and the Attorney General. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the governmental entity. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the

superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

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

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

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

- (1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law;
- (2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or
- (3) May have value for biological analysis but is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.

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

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending."

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

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

- (1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met; ~~and~~
- (2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the ~~defendant.~~ defendant; and
- (3) The defendant has signed a sworn affidavit of innocence."

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

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

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal."

SECTION 5. This act becomes effective March 1, 2008.

In the General Assembly read three times and ratified this the 24th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:02 p.m. this 31st day of August, 2007