

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 672

Short Title: Modify DNA Evidence Provisions. (Public)

Sponsors: Representatives Richardson and Faircloth (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

April 27, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY PROVISIONS REGARDING THE PRESERVATION OF AND  
3 APPEAL RIGHTS FOR DNA EVIDENCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.(a) G.S. 15A-268 reads as rewritten:  
6 "§ 15A-268. Preservation of biological evidence.

7 ...  
8 (a3) ~~When physical evidence is offered or admitted into evidence in a criminal proceeding~~  
9 ~~of the General Court of Justice, the presiding judge shall inquire of the State and defendant as to~~  
10 ~~the identity of the collecting agency of the evidence and whether the evidence in question is~~  
11 ~~reasonably likely to contain biological evidence and if that biological evidence is relevant to~~  
12 ~~establishing the identity of the perpetrator in the case. If either party asserts that the evidence in~~  
13 ~~question may have biological evidentiary value, and the court so finds, the court shall instruct~~  
14 ~~that the evidence be so designated in the court's records and that the evidence be preserved~~  
15 ~~pursuant to the requirements of this section.~~

16 (a4) ~~If evidence has been designated by the court as biological evidence pursuant to~~  
17 ~~subsection (a3) of this section, When physical evidence collected by law enforcement as part of~~  
18 ~~an investigation is offered or admitted into evidence in a criminal proceeding of the General~~  
19 ~~Court of Justice, the clerk of superior court that takes custody of evidence pursuant to the rules~~  
20 ~~of practice and procedure for the superior and district courts as adopted by the Supreme Court~~  
21 ~~pursuant to G.S. 7A-34 shall preserve such evidence consistent with subsection (a1) of this~~  
22 ~~section. Upon conclusion of the clerk's role as custodian, as provided in the applicable rules of~~  
23 ~~practice, defendant's direct appeal to the State courts, the clerk shall return such evidence to the~~  
24 ~~collecting agency, as determined in subsection (a3) of this section, agency in a manner that~~  
25 ~~ensures the chain of custody is maintained and documented.~~

26 ...  
27 (a6) The evidence described by subsection (a1) of this section shall be preserved for the  
28 following period:

29 ...  
30 (3) For conviction of any homicide, sex offense, assault, kidnapping, burglary,  
31 robbery, arson or burning, for which a Class B1-E felony punishment is  
32 imposed, the evidence shall be preserved during the period of incarceration  
33 and mandatory supervised release, including sex offender registration  
34 pursuant to Article 27A of Chapter 14 of the General Statutes, ~~except in cases~~  
35 ~~where the person convicted entered and was convicted on a plea of guilty, in~~



1                   ~~which case the evidence shall be preserved for the earlier of three years from~~  
2                   ~~the date of conviction or until released.~~Statutes.

3                   ...

4           (a7) Upon written request by the defendant, the custodial agency shall prepare an  
5 inventory of biological evidence relevant to the defendant's case that is in the custodial agency's  
6 custody. If the evidence was destroyed through court order or other written directive, the  
7 custodial agency shall provide the defendant with a copy of the court order or written directive.

8           ...."

9           **SECTION 1.(b)** This section becomes effective October 1, 2021, and applies to  
10 evidence in criminal proceedings prior to, on, or after that date.

11           **SECTION 2.(a)** G.S. 15A-269(b) reads as rewritten:

12           "(b) The court shall grant the motion for DNA testing and, if testing complies with FBI  
13 requirements, the run of any profiles obtained from the testing, upon its determination that:

14           (1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of  
15 this section have been ~~met~~;met.

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

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

20           **SECTION 2.(b)** This section is effective when it becomes law and applies to motions  
21 filed on or after that date.

22           **SECTION 3.(a)** G.S. 15A-270.1 reads as rewritten:

23           "**§ 15A-270.1. Right to ~~appeal denial of defendant's motion for DNA testing~~ appeal.**

24           The defendant may appeal ~~an order denying the defendant's motion for DNA testing~~  
25           ~~determinations~~ under this Article, including by an interlocutory appeal. The court shall appoint  
26 counsel in accordance with rules adopted by the Office of Indigent Defense Services upon a  
27 finding of indigency."

28           **SECTION 3.(b)** This section is effective when it becomes law and applies to appeals  
29 of determinations made on or after that date.

30           **SECTION 4.(a)** G.S. 15A-1415(f) reads as rewritten:

31           "(f) In the case of a defendant who is represented by counsel in postconviction  
32 proceedings in superior court, including proceedings pursuant to G.S. 15A-269, the defendant's  
33 prior trial or appellate counsel shall make available to the defendant's counsel their complete files  
34 relating to the case of the defendant. The State, to the extent allowed by law, shall make available  
35 to the defendant's counsel the complete files of all law enforcement and prosecutorial agencies  
36 involved in the investigation of the crimes committed or the prosecution of the defendant. If the  
37 State has a reasonable belief that allowing inspection of any portion of the files by counsel for  
38 the defendant would not be in the interest of justice, the State may submit for inspection by the  
39 court those portions of the files so identified. If upon examination of the files, the court finds that  
40 the files could not assist the defendant in investigating, preparing, or presenting a motion for  
41 appropriate relief, the court in its discretion may allow the State to withhold that portion of the  
42 files."

43           **SECTION 4.(b)** This section is effective when it becomes law and applies to  
44 postconviction proceedings beginning on or after that date.

45           **SECTION 5.** Except as otherwise provided, this act is effective when it becomes  
46 law.