

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 884*
Committee Substitute Favorable 4/19/01
Senate Judiciary I Committee Substitute Adopted 6/14/01

Short Title: Innocence Protection Act.

(Public)

Sponsors:

Referred to:

March 29, 2001

A BILL TO BE ENTITLED

AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY
CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S
INNOCENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-146 is amended by adding two new subsections to
read:

"(b1) Any person entitled to expungement under this section may also apply to the court for an order expunging DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Databank. A copy of the application for expungement of the DNA record or DNA sample shall be served on the district attorney for the judicial district in which the felony charges were brought not less than 20 days prior to the date of the hearing on the application. If the application for expungement is granted, a certified copy of the trial court's order dismissing the charges shall be attached to an order of expungement. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the SBI to send a letter documenting expungement as required by subsection (b2) of this section.

(b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this section, the SBI shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney at the address specified by the court in the order of expungement."

1 **SECTION 2.** Article 5 of Chapter 15A is amended by adding a new section
2 to read:

3 **"§ 15A-148. Expunction of DNA records when charges are dismissed on appeal or**
4 **pardon of innocence is granted.**

5 (a) Upon a motion by the defendant following the issuance of a final order by an
6 appellate court reversing and dismissing a conviction of an offense for which a DNA
7 analysis was done in accordance with Article 13 of Chapter 15A of the General Statutes,
8 or upon receipt of a pardon of innocence with respect to any such offense, the court
9 shall issue an order of expungement of the DNA record and samples in accordance with
10 subsection (b) of this section. The order of expungement shall include the name and
11 address of the defendant and the defendant's attorney and shall direct the SBI to send a
12 letter documenting expungement as required by subsection (b) of this section.

13 (b) When an order of expungement has been issued pursuant to subsection (a) of
14 this section, the order of expungement, together with a certified copy of the final
15 appellate court order reversing and dismissing the conviction or a certified copy of the
16 instrument granting the pardon of innocence, shall be provided to the SBI by the clerk
17 of court. Upon receiving an order of expungement for an individual whose DNA record
18 or profile has been included in the State DNA Database and whose DNA sample is
19 stored in the State DNA Databank, the DNA profile shall be expunged and the DNA
20 sample destroyed by the SBI, except that the order shall not apply to other offenses
21 committed by the individual that qualify for inclusion in the State DNA Database and
22 the State DNA Databank. A letter documenting expungement of the DNA record and
23 destruction of the DNA sample shall be sent by the SBI to the defendant and the
24 defendant's attorney at the address specified by the court in the order of expungement.
25 The SBI shall adopt procedures to comply with this subsection."

26 **SECTION 3.** G.S. 15A-266.10 is repealed.

27 **SECTION 4.** Article 13 of Chapter 15A of the General Statutes is amended
28 by adding the following new sections to read:

29 **"§ 15A-267. Access to DNA samples from crime scene.**

30 (a) A criminal defendant shall have access before trial to the following:

31 (1) Any DNA analyses performed in connection with the case in which the
32 defendant is charged.

33 (2) Any biological material, that has not been DNA tested, that was
34 collected from the crime scene, the defendant's residence, or the
35 defendant's property.

36 (b) Access as provided for in subsection (a) of this section shall be governed by
37 G.S. 15A-902 and G.S. 15A-952.

38 (c) Upon a defendant's motion made before trial in accordance with G.S. 15A-
39 952, the court may order the SBI to perform DNA testing and DNA Database
40 comparisons of any biological material collected but not DNA tested in connection with
41 the case in which the defendant is charged upon a showing of all of the following:

42 (1) That the biological material is relevant to the investigation.

1 (2) That the biological material was not previously DNA tested.

2 (3) That the testing is material to the defendant's defense.

3 (d) The defendant shall be responsible for bearing the cost of any further testing
4 and comparison of the biological materials, including any costs associated with the
5 testing and comparison by the SBI in accordance with this section, unless the court has
6 determined the defendant is indigent, in which event the State shall bear the costs.

7 **"§ 15A-268. Preservation of samples of biological materials.**

8 (a) Notwithstanding any other provision of law and subject to subsection (b) of
9 this section, a governmental entity that collects evidence containing DNA in the course
10 of a criminal investigation shall preserve a sample of the evidence collected for the
11 period of time a defendant convicted of a felony is incarcerated in connection with that
12 case. The governmental entity may determine how the evidence is retained pursuant to
13 this section, provided that the evidence is retained in a condition suitable for DNA
14 testing.

15 (b) The governmental entity may dispose of the sample of evidence containing
16 DNA preserved pursuant to subsection (a) of this section before the expiration of the
17 period of time described in subsection (a) of this section if all of the following
18 conditions are met:

19 (1) The governmental entity sent notice of its intent to dispose of the
20 sample of evidence to the district attorney in the county in which the
21 conviction was obtained.

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

37 (3) The written notification from the district attorney specified the
38 following:

39 a. That the governmental entity would destroy the sample of
40 evidence collected in connection with the case unless the
41 governmental entity received a written request that the sample
42 of evidence not be destroyed.

- 1 **b.** The address of the governmental entity where the written
2 request was to be sent.
- 3 **c.** That the written request must be received by the governmental
4 entity within 90 days of the date of receipt by the defendant of
5 the district attorney's written notification.
- 6 **d.** That the written request must ask that the material not be
7 destroyed or disposed of for one of the following reasons:
- 8 1. The case is currently on appeal.
9 2. The case is currently in postconviction proceedings.
10 3. The defendant will file within 180 days of the date of
11 receipt by the defendant of the district attorney's written
12 notification a motion for DNA testing pursuant to G.S.
13 15A-269, that is followed within 180 days of sending the
14 request that the sample of evidence not be destroyed or
15 disposed of, by a motion for DNA testing pursuant to
16 G.S. 15A-269, unless a request for extension is requested
17 by the defendant and agreed to by the governmental
18 entity in possession of the evidence.

- 19 (4) The governmental entity did not receive a written request in
20 compliance with the conditions set forth in sub-subdivision (3)d. of
21 this subsection within 90 days of the date of receipt by the defendant
22 of the district attorney's written notification.

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

33 **"§ 15A-269. Request for postconviction DNA testing.**

34 (a) A defendant may make a motion before the trial court that entered the
35 judgment of conviction against the defendant for performance of DNA testing of any
36 biological evidence that meets all of the following conditions:

- 37 (1) Is material to the defendant's defense.
38 (2) Is related to the investigation or prosecution that resulted in the
39 judgment.
40 (3) Meets either of the following conditions:
41 a. It was not DNA tested previously.

1 b. It was tested previously, but the requested DNA test would
2 provide results that are significantly more accurate and
3 probative of the identity of the perpetrator or accomplice or
4 have a reasonable probability of contradicting prior test results.

5 (b) The court shall grant the motion for DNA testing of such evidence upon its
6 determination that if a DNA test had been conducted on the evidence using current
7 technology, and if the results had been admitted in the trial resulting in the judgment,
8 there exists a reasonable probability that the verdict would have been more favorable to
9 the defendant.

10 (c) The court shall appoint counsel for the person who brings a motion under this
11 section if that person is indigent.

12 (d) The defendant shall be responsible for bearing the cost of any DNA testing
13 ordered under this section unless the court determines the defendant is indigent, in
14 which event the State shall bear the costs.

15 (e) DNA testing ordered by the court pursuant to this section shall be done as
16 soon as practicable. However, if the court finds that a miscarriage of justice will
17 otherwise occur and that DNA testing is necessary in the interests of justice, the court
18 shall order a delay of the proceedings or execution of the sentence pending the DNA
19 testing.

20 **"§ 15A-270. Post-test procedures.**

21 (a) Notwithstanding any other provision of law, upon receiving the results of the
22 DNA testing conducted under G.S. 15A-269, the court shall conduct a hearing to
23 evaluate the results and to determine if the results are unfavorable or favorable to the
24 defendant.

25 (b) If the results of DNA testing conducted under this section are unfavorable to
26 the defendant, the court shall dismiss the motion and, in the case of a defendant who is
27 not indigent, shall assess the defendant for the cost of the testing.

28 (c) If the results of DNA testing conducted under this section are favorable to the
29 defendant, the court shall enter any order that serves the interests of justice, including an
30 order that does any of the following:

31 (1) Vacates and sets aside the judgment.

32 (2) Discharges the defendant, if the defendant is in custody.

33 (3) Resentences the defendant.

34 (4) Grants a new trial."

35 **SECTION 5.** G.S. 15A-903 is amended by adding a new subsection to read:

36 "(g) DNA Laboratory Reports. – The defendant shall have the right to obtain a
37 copy of DNA laboratory reports provided to the district attorney revealing that there
38 was a DNA match to the defendant that was derived from a CODIS match during a
39 comparison search involving the defendant's DNA sample, in accordance with the
40 procedure set forth in G.S. 15A-902."

41 **SECTION 6.** G.S. 15A-267, as enacted in Section 4 of this act, and Section
42 5 of this act are effective when it becomes law and apply to persons charged with crimes

1 on or after that date. Section 6 of this act is effective when it becomes law. The
2 remainder of this act becomes effective October 1, 2001, and applies to evidence,
3 records, and samples in the possession of a governmental entity on or after October 1,
4 2001.