

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 884*
Committee Substitute Favorable 4/19/01

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 AND TO AMEND THE LAW PROVIDING COMPENSATION TO
THE PERSON FOR A WRONGFUL CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.5 is amended by adding a new subsection to
read:

"(c) For criminal defense purposes, the defendant, including the representative of the defendant, in a criminal action or proceeding shall have access to information in the State DNA Database or Databank relating to the number of requests previously made for a comparison search involving the defendant's DNA sample and the name and identity of the requesting party."

SECTION 2. G.S. 15A-266.10(a) reads as rewritten:

~~"(a) Any person whose DNA record or profile has been included in the State Database and whose DNA sample is stored in the State Databank may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the State Database or the inclusion of the person's DNA sample in the State Databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record as provided in G.S. 15A-146. A copy of the application for expungement shall be served on the district attorney for the judicial district in which the felony conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.~~

(a) Upon receipt of notification of a reversal of conviction and dismissal of the case or of the granting of a pardon of an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank, the DNA sample shall be expunged. The DNA record, and any

1 samples, analyses, or other documents relating to the record, whether in the possession
2 of the State DNA Database or Databank, any law enforcement or police agency, or any
3 forensic DNA laboratory, including any duplicates or copies, shall be returned to the
4 individual or to the attorney who represented the individual at the time the reversal or
5 pardon was granted. The order reversing and dismissing the conviction or the
6 instrument granting the pardon shall be accompanied by an order of expungement, and a
7 certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply
8 with this section."

9 **SECTION 3.** Article 13 of Chapter 15A of the General Statutes is amended
10 by adding the following new sections to read:

11 **"§ 15A-267. Access to DNA samples from crime scene.**

12 (a) A criminal defendant or the defendant's representative shall have access
13 before trial to any DNA samples and analyses performed in connection with the case in
14 which the defendant is charged.

15 (b) The court, in response to a motion for such comparison by a defendant, shall
16 order that DNA information from a crime scene sample obtained in the course of the
17 investigation of an alleged crime be checked against the DNA records and profiles
18 maintained by or available through the State DNA Database and Databank and the
19 national DNA index system, and that the results of the check be disclosed to the
20 defendant and to the prosecutor whose jurisdiction includes the location of the alleged
21 commission of the crime, upon a showing by the defendant that the analysis may be
22 material to the defendant's defense and that the request is reasonable.

23 **"§ 15A-268. Preservation of samples of biological materials.**

24 (a) Notwithstanding any other provision of law and subject to subsection (b) of
25 this section, a governmental entity that, in the course of a criminal investigation, collects
26 evidence containing DNA shall preserve a sample of any biological material secured in
27 connection with the criminal case for the period of time the person remains incarcerated
28 in connection with that case. The governmental entity may determine how the evidence
29 is retained pursuant to this section, provided that the evidence is retained in a condition
30 suitable for DNA testing.

31 (b) The governmental entity may dispose of biological material before the
32 expiration of the period of time described in subsection (a) of this section if all the
33 conditions set forth below are met:

34 (1) The governmental entity notifies all of the following persons of the
35 provision of this section and of the intention of the governmental entity
36 to dispose of the material: any person, who as a result of a felony
37 conviction in the case is currently serving a term of imprisonment and
38 who remains incarcerated in connection with the case, any counsel of
39 record, the public defender in the county of conviction, the district
40 attorney in the county of conviction, and the Attorney General.

41 (2) The notifying entity does not receive, within 90 days of sending the
42 notification, a request under penalty of perjury that the material not be

1 destroyed or disposed of because the declarant will file within 180
2 days a motion for DNA testing pursuant to G.S. 15A-269 that is
3 followed within 180 days by a motion for DNA testing pursuant to
4 G.S. 15A-269, unless a request for extension is requested by the
5 convicted person and agreed to by the governmental entity in
6 possession of the evidence.

7 **"§ 15A-269. Request for post-conviction DNA testing.**

8 (a) A defendant may make a motion before the trial court that entered the
9 judgment of conviction in the defendant's case for performance of forensic DNA testing
10 of any biological material that:

11 (1) Is related to the investigation or prosecution that resulted in the
12 judgment; and

13 (2) Meets either of the following conditions:

14 a. It was not tested previously.

15 b. It was tested previously, but the requested DNA test would
16 provide results that are reasonably more accurate and probative
17 of the identity of the perpetrator or accomplice or have a
18 reasonable probability of contradicting prior test results.

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

24 (c) In cases in which the defendant has been convicted of first degree murder and
25 is in custody awaiting imposition of the death penalty, the State shall perform forensic
26 DNA testing of any biological material that:

27 (1) Is related to the investigation or prosecution that resulted in the
28 judgment; and

29 (2) Meets either of the following conditions:

30 a. It was not tested previously.

31 b. It was tested previously, but the requested DNA test would
32 provide results that are reasonably more discriminating and
33 probative of the identity of the perpetrator or accomplice or
34 have a reasonable probability of contradicting prior test results.

35 At the request of either the prosecution or the defense, the testing shall be performed
36 before an execution date is set, and the results of the testing shall be provided to all
37 counsel and to the Governor before the execution is carried out.

38 (d) The court shall appoint counsel for the person who brings a motion under this
39 section if that person is indigent.

40 (e) The cost of DNA testing ordered under this section shall be borne by the State
41 or the applicant, as the court may order in the interests of justice, if it is shown that the
42 applicant is not indigent and possesses the ability to pay.

1 (f) DNA testing ordered by the court pursuant to this section shall be done as
2 soon as practicable. However, if the court finds that a miscarriage of justice will
3 otherwise occur and that it is necessary in the interests of justice to give priority to the
4 DNA testing, the court may order that the SBI be required to give priority to the DNA
5 testing ordered pursuant to this section.

6 **"§ 15A-270. Post-test procedures.**

7 (a) Notwithstanding any other provision of law, upon receipt of the results of the
8 DNA testing conducted under G.S. 15A-269, the court shall conduct a hearing to
9 evaluate the results and to determine if the results are unfavorable or favorable to the
10 defendant.

11 (b) If the results of DNA testing conducted under this section are unfavorable to
12 the defendant, the court:

13 (1) Shall dismiss the motion; and

14 (2) In the case of a defendant who is not indigent, may assess the
15 defendant for the cost of the testing.

16 (c) If the results of DNA testing conducted under this section are favorable to the
17 defendant, the court shall enter any order that serves the interests of justice, including an
18 order:

19 (1) Vacating and setting aside the judgment;

20 (2) Discharging the defendant, if the defendant is in custody;

21 (3) Presentencing the defendant; or

22 (4) Granting a new trial."

23 **SECTION 4.** This act becomes effective December 1, 2001, and applies to
24 all offenses committed on or after that date and all actions and proceedings pending in
25 the courts of this State on or after that date.