

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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**HOUSE BILL 235
Committee Substitute Favorable 3/31/21**

Short Title: Evidence/Dist. Ct Speedy Trials.

(Public)

Sponsors:

Referred to:

March 9, 2021

A BILL TO BE ENTITLED

1 AN ACT TO ELIMINATE UNNECESSARY DELAY OF CRIMINAL PROCEEDINGS IN
2 DISTRICT COURT BY PERMITTING THE REMOTE TESTIMONY OF CERTAIN
3 WITNESSES USING TECHNOLOGY AND PROCEDURES THAT PROTECT THE
4 RIGHTS OF DEFENDANTS AND ADVANCE THE EFFICIENT ADMINISTRATION OF
5 JUSTICE.
6

7 Whereas, the district courts of this State had a case backlog prior to the COVID-19
8 pandemic; and

9 Whereas, the closure of the district courts due to the COVID-19 pandemic has
10 exacerbated the case backlog, a backlog that will continue to grow for the duration of the
11 COVID-19 pandemic; and

12 Whereas, all criminal defendants have the right to court proceedings free from
13 unreasonable delay, a right that was previously, is currently, and will be in jeopardy due to the
14 district court case backlog; and

15 Whereas, the North Carolina court system is bifurcated into the district and superior
16 courts; and

17 Whereas, due to this bifurcation, the district courts function essentially as a
18 preliminary proceeding that assures that the prosecution of a criminal defendant proceeds without
19 the unreasonable delay that would be unavoidable if the district courts did not exist; and

20 Whereas, though preliminary in nature, a district court can issue a final and binding
21 disposition in a case before it; and

22 Whereas, a criminal defendant in a case before the district court may request, prior to
23 trial, to have the case transferred to the superior court and may appeal to the superior court for a
24 trial de novo following a final disposition in district court; and

25 Whereas, by virtue of the criminal defendant's right to appeal to the superior court for
26 a trial de novo, all rights of the criminal defendant are retained following proceedings in district
27 court; and

28 Whereas, this bifurcation of the courts of this State provides a criminal defendant with
29 the unique opportunity to a "second bite of the apple" in the defendant's case; and

30 Whereas, the legal protections from being placed twice in jeopardy for the same
31 conduct preclude the State from appealing an unfavorable outcome at trial in district court; and

32 Whereas, a witness in any court proceeding is one who, being duly sworn or affirmed,
33 testifies as to the witness's knowledge of specific facts relevant to the case for which the witness
34 testifies; and

35 Whereas, a forensic or chemical analyst serving as a witness in a district court
36 proceeding testifies regarding approved, objective laboratory processes in order to neutrally



1 authenticate evidence being submitted to the court by one or more adversarial parties of a court
2 proceeding; and

3 Whereas, a forensic or chemical analyst, and each person in the chain of custody of
4 evidence produced by the analyst, does not play a role in initiating a criminal charge against a
5 criminal defendant or in deciding whether or not to prosecute a criminal defendant; and

6 Whereas, a criminal proceeding based upon a misdemeanor charge, including a
7 criminal trial, often occurs in district court before a district court judge, who is the finder of fact
8 and the finder of law; and

9 Whereas, in superior court a defendant may exercise the defendant's right to a trial by
10 jury, along with other rights, the exercise of which is unavailable in district court; and

11 Whereas, the North Carolina General Assembly finds that in order to safeguard a
12 criminal defendant's right to proceedings free from unreasonable delay, it is reasonable and
13 prudent to allow forensic and chemical analysts, and each person in the chain of custody of
14 evidence produced by the analysts, to provide real-time, remote, two-way audio and video
15 testimony before the district courts of this State using state-of-the-art technology and equipment
16 that enable the criminal defendant, the judge, and the attorneys in the case to observe the
17 demeanor of the forensic analyst throughout the direct examination and cross-examination of the
18 forensic analyst, and that enable the forensic analyst to likewise observe the demeanor of the
19 criminal defendant; Now, therefore,

20 The General Assembly of North Carolina enacts:

21 **SECTION 1.** The General Assembly finds all of the following:

- 22 (1) All criminal defendants have the right to court proceedings free from
23 unreasonable delay, a right that is in jeopardy due to a perpetual district court
24 case backlog.
- 25 (2) The North Carolina court system is bifurcated into the district and superior
26 courts, and due to this bifurcation, the district courts function essentially as a
27 preliminary proceeding that assures that the prosecution of a criminal
28 defendant proceeds without the unreasonable delay that would be unavoidable
29 if the district courts did not exist.
- 30 (3) In a criminal proceeding in district court, the finder of fact is the district court
31 judge presiding over the proceeding, who is legally trained to weigh the
32 credibility, relevance, and veracity of evidence, including witness testimony.
- 33 (4) Simultaneous, two-way audio and video remote testimony in real time using
34 state-of-the-art technology allows a defendant to observe and cross-examine
35 a witness, a district court judge to observe and question a witness to weigh the
36 credibility and veracity of the witness's testimony, and a witness to observe a
37 defendant against whom the witness is testifying.
- 38 (5) The testimony of a forensic or chemical analyst is based upon objective,
39 scientifically based testing that allows the analyst to reach dispassionate
40 conclusions that may be presumed reliable and trustworthy.
- 41 (6) The testimony of a witness called to establish the chain of custody of evidence
42 is not adversarial in nature and merely conveys the fact of a ministerial
43 function performed by the witness in the course of the witness's work.
- 44 (7) Upon conviction in a criminal proceeding in district court, a defendant may
45 appeal to superior court for a trial de novo, retaining all rights that had
46 previously been afforded the criminal defendant in district court.

47 **SECTION 2.** G.S. 8-58.20 reads as rewritten:

48 "**§ 8-58.20. Forensic analysis admissible as evidence.**

49 (a) In any criminal prosecution, a laboratory report of a written forensic analysis,
50 including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's
51 DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and that

1 is signed and sworn to by the person performing the analysis ~~may~~shall be admissible in evidence
 2 without the testimony of the analyst who prepared the report in accordance with the requirements
 3 of this section.

4 ...

5 (g) Procedure for Establishing Chain of Custody of Evidence Subject to Forensic
 6 Analysis Without Calling Unnecessary Witnesses. –

7 ...

8 Nothing in this subsection precludes the right of any party to call any ~~witness or witness,~~
 9 except an analyst regarding the results of forensic testing and the testimony of each person in the
 10 associated chain of custody made available via remote testimony in real time in district court
 11 pursuant to G.S. 15A-1225.3. Nothing in this subsection precludes the right of any party to
 12 introduce any evidence supporting or contradicting the evidence contained in the statement.

13"

14 **SECTION 3.** G.S. 15A-1225.3 reads as rewritten:

15 "**§ 15A-1225.3. Forensic analyst remote testimony.**

16 (a) Definitions. – The following definitions apply to this section:

17 (1) Criminal proceeding. – Any hearing or trial in superior court in a prosecution
 18 of a person charged with violating a criminal law of this State and any hearing
 19 or proceeding conducted under Subchapter II of Chapter 7B of the General
 20 Statutes where a juvenile is alleged to have committed an offense that would
 21 be a criminal offense if committed by an adult.

22 (1a) District court proceeding. – Any hearing or trial in district court in a
 23 prosecution of a person charged with violating a criminal law of this State.

24 (2) Remote testimony. – A method by which a forensic analyst testifies from a
 25 location other than the location where the hearing or trial is being conducted
 26 and outside the physical presence of a party or parties.

27 (b) ~~Remote Testimony Authorized in Real Time Authorized for Criminal Proceeding.~~ –
 28 In any criminal proceeding, the testimony of an analyst regarding the results of forensic testing
 29 admissible pursuant to G.S. 8-58.20, and reported by that analyst, shall be permitted by remote
 30 testimony if all of the following occur:

31 (1) The State has provided a copy of the report to the attorney of record for the
 32 defendant, or to the defendant if that person has no attorney, as required by
 33 G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full
 34 laboratory report package provided to the district attorney.

35 (2) The State notifies the attorney of record for the defendant, or the defendant if
 36 that person has no attorney, at least 15 business days before the proceeding at
 37 which the evidence would be used of its intention to introduce the testimony
 38 regarding the results of forensic testing into evidence using remote testimony.

39 (3) The defendant's attorney of record, or the defendant if that person has no
 40 attorney, fails to file a written objection with the court, with a copy to the
 41 State, at least five business days before the proceeding at which the testimony
 42 will be presented that the defendant objects to the introduction of the remote
 43 testimony.

44 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to
 45 file a written objection as provided in this subsection, then the objection shall be deemed waived
 46 and the analyst shall be allowed to testify by remote testimony.

47 (b1) Remote Testimony in Real Time Authorized in District Court. – In any district court
 48 proceeding, the testimony of an analyst regarding the results of forensic testing admissible
 49 pursuant to G.S. 8-58.20, and reported by that analyst, and the testimony of each person in the
 50 associated chain of custody admissible pursuant to G.S. 8-58.20(g) shall be permitted by remote
 51 testimony if each of the following occurs:

1 (1) The State has provided a copy of the report to the attorney of record for the
2 defendant, or to the defendant if that person has no attorney, as required by
3 G.S. 8-58.20(d) and (g). For purposes of this subdivision, "report" means the
4 full laboratory report package provided to the district attorney.

5 (2) The State notifies the attorney of record for the defendant, or the defendant if
6 that person has no attorney, at least 15 business days before the proceeding at
7 which the evidence would be used of its intention to introduce the testimony
8 regarding the results of forensic testing into evidence using remote testimony
9 in real time.

10 Nothing in this subsection shall be construed to determine the admissibility of evidence in a
11 criminal proceeding in superior court, including a trial de novo pursuant to G.S. 15A-1431.

12 (c) Testimony. – The method used for remote testimony authorized by this section shall
13 allow the trier of fact and all parties to observe the demeanor of the ~~analyst-remote witness~~ as the
14 ~~analyst-witness~~ testifies in a similar manner as if the ~~analyst-witness~~ were testifying in the location
15 where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney,
16 or the defendant if that person has no attorney, has a full and fair opportunity for examination
17 and cross-examination of the ~~analyst-witness~~.

18 (d) Nothing in this section shall preclude the right of any party to call any ~~witness-witness~~,
19 except an analyst regarding the results of forensic testing and the testimony of each person in the
20 associated chain of custody made available via remote testimony in real time in a district court
21 proceeding pursuant to subsection (b1) of this section.

22 (e) Nothing in this section shall obligate the Administrative Office of the Courts or the
23 State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of
24 funds for that purpose."

25 **SECTION 4.** G.S. 20-139.1 reads as rewritten:

26 "**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**
27 **provisions; controlled-drinking programs.**

28 ...

29 (c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the
30 North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department
31 Laboratory, or any other laboratory approved for chemical analysis by the Department of Health
32 and Human Services (DHHS), are admissible as evidence in all administrative hearings, and in
33 any court, without further authentication and without the testimony of the analyst. For the
34 purposes of this section, a "laboratory approved for chemical analysis" by the DHHS includes,
35 but is not limited to, any hospital laboratory approved by DHHS pursuant to the program resulting
36 from the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA).

37 The results shall be certified by the person who performed the analysis. The provisions of
38 this subsection may be utilized in any administrative hearing, but can only be utilized in cases
39 tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court,
40 if:

41 (1) The State notifies the defendant no later than 15 business days after receiving
42 the report and at least 15 business days before the proceeding at which the
43 evidence would be used of its intention to introduce the report into evidence
44 under this subsection and provides a copy of the report to the ~~defendant,~~
45 ~~and defendant.~~

46 (2) The defendant fails to file a written objection with the court, with a copy to
47 the State, at least five business days before the proceeding at which the report
48 would be used that the defendant objects to the introduction of the report into
49 evidence.

50 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
51 a written objection as provided in this subsection, then the objection shall be deemed waived and

1 the report shall be admitted into evidence without the testimony of the analyst. Upon filing a
2 timely objection, the admissibility of the report shall be determined and governed by the
3 appropriate rules of evidence.

4 If the proceeding at which the report would be introduced into evidence under this subsection
5 is continued, the notice provided by the State, the written objection filed by the defendant, or the
6 failure of the defendant to file a written objection shall remain effective at any subsequent
7 calendaring of that proceeding.

8 The report containing the results of any blood or urine test may be transmitted electronically
9 or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in
10 any court or administrative hearing without further authentication. A copy of the report shall be
11 sent to the charging officer, the clerk of superior court in the county in which the criminal charges
12 are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

13 Nothing in this subsection precludes the right of any party to call any ~~witness-witness~~, except
14 a chemical analyst in district court as provided in subsection (c6) of this section, or to introduce
15 any evidence supporting or contradicting the evidence contained in the report.

16 ...

17 (c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary
18 Witnesses. –

19 ...

20 (4) Nothing in this subsection precludes the right of any party to call any ~~witness~~
21 ~~or witness~~, except an analyst regarding the results of chemical testing and the
22 testimony of each person in the associated chain of custody made available
23 via remote testimony in real time in district court pursuant to subsection (c6)
24 of this section. Nothing in this subsection precludes the right of any party to
25 introduce any evidence supporting or contradicting the evidence contained in
26 the statement.

27 ...

28 (c5) ~~The~~ Except as provided in subsection (c6) of this section, testimony of an analyst
29 regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection
30 (c1) of this section, and reported by that analyst, shall be permitted by remote testimony, as
31 defined in G.S. 15A-1225.3, in all administrative hearings, and in any superior court if all of the
32 following occur:

33 ...

34 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to
35 file a written objection as provided in this subsection, then the objection shall be deemed waived
36 and the analyst shall be allowed to testify by remote testimony.

37 The method used for remote testimony authorized by this subsection shall allow the trier of
38 fact and all parties to observe the demeanor of the analyst as the analyst testifies in a similar
39 manner as if the analyst were testifying in the location where the hearing or trial is being
40 conducted. The court shall ensure that the defendant's attorney, or the defendant if that person
41 has no attorney, has a full and fair opportunity for examination and cross-examination of the
42 analyst.

43 Nothing in this section shall preclude the right of any party to call any witness. Nothing in
44 this subsection shall obligate the Administrative Office of the Courts or the State Crime
45 Laboratory to incur expenses related to remote testimony absent an appropriation of funds for
46 that purpose.

47 (c6) The testimony of an analyst regarding the results of a chemical analysis of blood or
48 urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, and the
49 testimony of each person in the associated chain of custody admissible pursuant to subsection
50 (c3) of this section shall be permitted by remote testimony, as defined in G.S. 15A-1225.3, in
51 district court, if each of the following occurs:

1 (1) The State has provided a copy of the report to the attorney of record for the
2 defendant, or to the defendant if that person has no attorney, as required by
3 subsections (c1) and (c3) of this section.

4 (2) The State notifies the attorney of record for the defendant, or the defendant if
5 that person has no attorney, at least 15 business days before the proceeding at
6 which the evidence would be used of its intention to introduce the testimony
7 regarding the chemical analysis into evidence using remote testimony.

8 The method used for remote testimony authorized by this subsection shall allow the trier of
9 fact and all parties to observe the demeanor of the remote witness as the witness testifies in a
10 similar manner as if the witness were testifying in the location where the hearing or trial is being
11 conducted. The court shall ensure that the defendant's attorney, or the defendant if that person
12 has no attorney, has a full and fair opportunity for examination and cross-examination of the
13 witness.

14 Nothing in this subsection shall obligate the Administrative Office of the Courts or the State
15 Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds
16 for that purpose.

17 Nothing in this subsection shall preclude the right of any party to call any witness, except an
18 analyst regarding the results of chemical testing and the testimony of each person in the
19 associated chain of custody made available via remote testimony in real time in district court
20 pursuant to this subsection.

21 ...

22 (e2) Except as governed by subsection (c1) or (c3) of this section, the State can only use
23 the provisions of subsection (e1) of this section if:

24 (1) The State notifies the defendant no later than 15 business days after receiving
25 the affidavit and at least 15 business days before the proceeding at which the
26 affidavit would be used of its intention to introduce the affidavit into evidence
27 under this subsection and provides a copy of the affidavit to the ~~defendant,~~
28 and defendant.

29 ...

30 The failure to file a timely objection as provided in this subsection shall be deemed a waiver
31 of the right to object to the admissibility of the affidavit, and the affidavit shall be admitted into
32 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
33 of the report shall be determined and governed by the appropriate rules of evidence. The case
34 shall be continued until the analyst can be present. The criminal case shall not be dismissed due
35 to the failure of the analyst to appear, unless the analyst willfully fails to appear after being
36 ordered to appear by the court. If the proceeding at which the affidavit would be introduced into
37 evidence under this subsection is continued, the notice provided by the State, the written
38 objection filed by the defendant, or the failure of the defendant to file a written objection shall
39 remain effective at any subsequent calendaring of that proceeding.

40 Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party
41 to call any ~~witness or witness,~~ except an analyst regarding the results of chemical testing and the
42 testimony of each person in the associated chain of custody made available via remote testimony
43 in real time in district court pursuant to subsection (c6) of this section. Nothing in subsection (e1)
44 or subsection (e2) of this section precludes the right of any party to introduce any evidence
45 supporting or contradicting the evidence contained in the affidavit.

46 "

47 **SECTION 5.** This act is effective when it becomes law and applies to criminal
48 proceedings, administrative hearings, and adjudicatory hearings in juvenile court beginning on
49 or after that date.