

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1767

Short Title: DNA Testing.

(Public)

Sponsors: Representatives Miner; Hunter, Shubert, and Weiss.

Referred to: Judiciary II.

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE STATE BUREAU OF INVESTIGATION MUST DO DNA TESTING AND ANALYSIS OF EVIDENCE COLLECTED AT A RAPE CRIME SCENE IF REQUESTED BY THE VICTIM OR THE INVESTIGATING LOCAL LAW ENFORCEMENT AGENCY AND THAT THE COSTS OF THE TESTS AND ANALYSIS SHALL BE BORNE BY THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§15A-267.1. DNA testing and analysis of evidence obtained at rape crime scenes.

(a) The SBI shall perform DNA testing and analysis on any biological material that is collected from the crime scene of a rape upon the written request of the rape victim or the local law enforcement agency investigating the rape.

(b) A rape victim who requests a DNA test and analysis of crime scene evidence under this section shall submit the written request to the district attorney in the county in which the crime occurred. The district attorney shall forward the request to the governmental entity that collected the evidence. Upon receipt of the request from the district attorney, the governmental entity shall submit the samples from the evidence obtained from the crime scene to the SBI in accordance with the rules governing this procedure adopted by the SBI.

(c) A local law enforcement agency that requests a DNA test and analysis of crime scene evidence under this section shall submit the written request directly to the SBI in accordance with the rules governing this procedure adopted by the SBI.

(d) The State shall bear the costs for the testing and analysis required under this section."

SECTION 2. G.S. 15A-268 reads as rewritten:

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

(a) 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

1 of a criminal investigation shall preserve a sample of the evidence collected for the
2 period of time a defendant convicted of a felony is incarcerated in connection with that
3 case. The governmental entity may determine how the evidence is retained pursuant to
4 this section, provided that the evidence is retained in a condition suitable for DNA
5 testing.

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

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

13 (2) The district attorney gave to each of the following persons written
14 notification of the intent of the entity governmental to dispose of the
15 sample of evidence: any defendant convicted of a felony who is
16 currently incarcerated in connection with the case, the current
17 defendant's counsel of record, the Office of Indigent Defense Services,
18 the victim of the crime if the offense was rape, and the Attorney
19 General. The notice shall be consistent with the provisions of this
20 section, ~~and the section.~~ The district attorney shall send a copy of the
21 notice to the governmental entity. Delivery of written notification from
22 the district attorney to the defendant was effectuated by the district
23 attorney transmitting the written notification to the superintendent of
24 the correctional facility where the defendant was assigned at the time
25 and the superintendent's personal delivery of the written notification to
26 the defendant. Certification of delivery by the superintendent to the
27 defendant in accordance with this subdivision was in accordance with
28 subsection (c) of this section.

29 (3) The written notification from the district attorney specified the
30 following:

31 a. That the governmental entity would destroy the sample of
32 evidence collected in connection with the case unless the
33 governmental entity received a written request that the sample
34 of evidence not be destroyed.

35 b. The address of the governmental entity where the written
36 request was to be sent.

37 c. That the written request must be received by the governmental
38 entity within 90 days of the date of receipt by the defendant of
39 the district attorney's written ~~notification~~ notification and within
40 90 days of the date of receipt by the rape victim of the district
41 attorney's written notification when the offense was a rape.

42 d. That the written request must ask that the material not be
43 destroyed or disposed of for one of the following reasons:

44 1. The case is currently on appeal.

- 1 2. The case is currently in postconviction proceedings.
2 3. The defendant will file within 180 days of the date of
3 receipt by the defendant of the district attorney's written
4 notification a motion for DNA testing pursuant to G.S.
5 15A-269, that is followed within 180 days of sending the
6 request that the sample of evidence not be destroyed or
7 disposed of, by a motion for DNA testing pursuant to
8 G.S. 15A-269, unless a request for extension is requested
9 by the defendant and agreed to by the governmental
10 entity in possession of the evidence.

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

15 (5) The governmental entity did not receive a written request in
16 compliance with the conditions set forth in sub-subdivision (3)d. of
17 this subsection within 90 days of the date of receipt by the rape victim
18 of the district attorney's written notification.

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

29 (d) The district attorney shall send a rape victim the notice required under this
30 section by certified mail. The return receipt shall be sent by the district attorney to the
31 governmental entity that intends to dispose of the sample of evidence. The
32 governmental entity may rely on the receipt as evidence of the date of receipt by the
33 rape victim."

34 **SECTION 3.** This act becomes effective December 1, 2002, and applies to
35 offenses committed on or after that date.