

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH10350-SA-8

Short Title: Criminal Law Procedures.

(Public)

Sponsors: Representative Stevens.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE DEPOSITIONS OF CERTAIN WITNESSES FOR
PRESERVATION OF TESTIMONY IN CRIMINAL ACTIONS, TO PROVIDE
ADDITIONAL RIGHTS FOR VICTIMS OF SEXUAL ASSAULT, AND TO MAKE
MODIFICATIONS TO THE CONFERENCE OF DISTRICT ATTORNEYS.

The General Assembly of North Carolina enacts:

DEPOSITIONS OF CERTAIN WITNESSES IN CRIMINAL ACTIONS

SECTION 1.(a) Article 10 of Chapter 8 of the General Statutes reads as rewritten:

"Article 10.

"Depositions.

"Part 1. Depositions in Criminal Actions.

...

"§ 8-74. Depositions for defendant in criminal actions.

In all criminal actions, hearings and investigations it shall be lawful for the defendant in any such action to make affidavit before the clerk of the superior court of the county in which said action is pending, that it is important for the defense that he have the testimony of any person, whose name must be given, and that such person is so infirm, or otherwise physically incapacitated, or nonresident of this State, that he cannot procure his attendance at the trial or hearing of said cause. Upon the filing of such affidavit, it shall be the duty of the clerk to appoint some responsible person to take the deposition of such witness, which deposition may be read in the trial of such criminal action under the same rules as now apply by law to depositions in civil actions: provided, that the district attorney or prosecuting attorney of the district, county or town in which such action is pending have 10 days' notice of the taking of such deposition, who may appear in person or by representative to conduct the cross-examination of such witness.

"§ 8-74.1. When deposition to preserve testimony in criminal proceedings may be taken by the State.

(a) At any time after a defendant has been charged with an offense against the laws of this State or an ordinance of any political subdivision or authority thereof, upon motion of the State, the court having jurisdiction to try the offense charged may, after notice to the defendant, order that the testimony of a prospective material witness be taken by deposition and that any designated evidence not privileged be produced at the same time and place.

(b) The court shall not order the taking of the witness's testimony unless it appears to the satisfaction of the court that the testimony of the witness is material to the proceeding and at least one of the following apply:

(1) The witness is in imminent danger of death or great bodily harm.



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- (2) The witness has been threatened with death or great bodily harm because of the witness's status as a potential witness in a criminal trial or proceeding.
- (3) The witness is about to leave this State and there are reasonable grounds to believe that the witness will be unable to attend a criminal trial or proceeding.
- (4) The witness is so sick or infirm as to create reasonable grounds to believe that the witness will be unable to testify at a criminal trial or proceeding.
- (5) The witness is being detained as a material witness and there are reasonable grounds to believe that the witness will flee if released from detention.
- (6) The witness is 65 years of age or older.
- (c) A motion to take a deposition of a material witness shall be verified and shall state all of the following:
- (1) The nature of the offense charged.
- (2) The status of the criminal proceedings.
- (3) The name or initials of the witness unless, for good cause shown, the court allows an exception to this subdivision.
- (4) That the testimony of the witness is material to the proceeding.
- (5) The provision of subsection (b) of this section that is the basis for taking the deposition.
- (d) A motion to take a deposition shall be filed in the court having jurisdiction to try the defendant for the offense charged; provided, however, that if the defendant is charged with multiple offenses, only the court having jurisdiction to try the most serious charge against the defendant shall have jurisdiction to hear and decide the motion to take a deposition.
- (e) When the State moves for an order pursuant to this section, it shall give not less than 10 days' notice of the hearing to the defendant. A copy of the motion shall be served upon the defendant pursuant to the rules set forth in G.S. 15A-951. A copy of the notice shall be attached to the motion and filed with the clerk of court.
- (f) If the court is satisfied that the examination of the witness is authorized by law and necessary to achieve the interests of justice, the court shall make written findings to that effect and enter an order setting a time of not more than 30 days during which the deposition shall be taken.
- (g) If the defendant fails to appear for the hearing, the court shall hear the motion ex parte unless the court determines that the defendant's absence was not willful and should be excused for good cause. If the court so finds, the defendant may request an additional hearing on the State's motion prior to the day upon which the deposition shall be taken.
- (h) Upon motion of either party, the court may designate a judge who shall preside over the deposition. The designated judge may be a judge of any court of this State who is otherwise qualified to preside over the trial of criminal proceedings in the court having jurisdiction over the offense charged.
- "§ 8-74.2. Notice of deposition; presence of defendant at examination; child witness; witness with an intellectual or developmental disability.**
- (a) Depositions ordered pursuant to G.S. 8-74.1 shall be conducted in any court of this State. All proceedings of the deposition shall be recorded and transcribed as part of the record and made available to both parties.
- (b) The State shall give the defendant reasonable written notice of the time and place for taking the deposition. The notice shall state the name or initials of each person to be examined.
- (c) On motion of a defendant that has received notice pursuant to subsection (b) of this section, the court for cause shown may extend or shorten the time or change the place for taking the deposition.
- (d) The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present,

1 produce the defendant at the examination and keep the defendant in the presence of the witness
2 during the examination.

3 (e) A defendant not in custody shall have the right to be present at the examination; but
4 failure of the defendant to appear after notice, absent good cause shown, shall constitute a waiver
5 of that right and of any objection to the taking and use of the deposition based upon that right.

6 (f) Notwithstanding the provisions of subsections (d) and (e) of this section, a defendant
7 may be excluded from the place of examination if, after being warned by the judge that disruptive
8 conduct will cause the defendant's removal from the place where the deposition is being taken,
9 the defendant persists in conduct which would justify exclusion from that place.

10 (g) If the witness is a child, the court may order that the deposition be taken in accordance
11 with G.S. 15A-1225.1.

12 (h) If the witness is an individual with an intellectual or developmental disability, the
13 court may order that the deposition be taken in accordance with G.S. 15A-1225.2.

14 **"§ 8-74.3. Right to counsel; payment of costs and expenses.**

15 (a) A defendant shall have the right to have counsel for any deposition ordered under this
16 section, unless the defendant elects to proceed without counsel.

17 (b) Whenever a deposition is taken at the request of the State, the cost of the deposition
18 shall be paid by the State in the same manner as any other motion hearing that may appear on the
19 criminal docket.

20 **"§ 8-74.4. Manner of conducting deposition.**

21 If a judge has been designated to preside over the deposition, objections to interrogation of
22 the witness shall be made to and ruled on by that judge in the same matter as at the trial of a
23 criminal proceeding.

24 **"§ 8-74.5. Availability to State and defendant of deponent's previous statements.**

25 The State or the defendant shall make available to each other, for examination and use at the
26 taking of a deposition pursuant to this Part, any statement of the witness being deposed which is
27 in the possession of the State or the defendant and which would be required to be made available
28 if the witness were testifying at the trial.

29 **"§ 8-74.6. Admissibility and use of deposition.**

30 (a) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise
31 admissible under the rules of evidence, may be used if the witness is unavailable. Any deposition
32 may also be used by any party for the purpose of contradicting or impeaching the testimony of
33 the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an
34 adverse party may require the offering of any other part, as provided for in G.S. 8C-1, Rule 106.

35 (b) A witness is not unavailable if the exemption, refusal to testify, claim of lack of
36 memory, inability, or absence of such witness is due to the procurement or wrongdoing of the
37 party offering the deposition at the hearing or trial for the purpose of preventing the witness from
38 attending or testifying.

39 **"§ 8-74.7. Objections to admission of deposition.**

40 Objections to receiving in evidence a deposition or part thereof may be made as provided in
41 civil proceedings.

42 **"§ 8-74.8. Recording of deposition.**

43 (a) Any party shall have the right to require that the deposition be recorded and preserved
44 by the use of audiovisual equipment in addition to a stenographic record. The audiovisual
45 recording shall be transmitted to the clerk of the court which ordered the deposition and shall be
46 made available for viewing and copying only to the prosecuting attorney and defendant's attorney
47 prior to trial. An audiovisual recording made pursuant to this section shall not be available for
48 inspection or copying by the public until such audiovisual recording has been admitted into
49 evidence during a trial or hearing in the case in which such deposition is made.

50 (b) An audiovisual recording made pursuant to this section may be admissible at a trial
51 or hearing as an alternative to the stenographic record of the deposition.

1 **"§ 8-74.9. Agreement of parties to deposition.**

2 Nothing in this Part shall preclude the taking of a deposition, orally or upon written questions,
3 or the use of a deposition by agreement of the parties with the consent of the court.

4 **"§ 8-74.10. Depositions taken only in exceptional circumstances; misuse of procedures.**

5 It is the intent of the General Assembly that depositions shall be taken in criminal proceedings
6 only in exceptional circumstances when it is in the interests of justice that the testimony of a
7 prospective witness be taken and preserved for use at trial. If the court finds that any party or
8 counsel for a party is using the procedures set forth in this Part for the purpose of harassment or
9 delay, such conduct may be punished as contempt of court.

10 ...

11 "Part 2. Depositions in Civil Actions.

12 **"§ 8-76. Depositions before municipal authorities.**

13 Any board of aldermen, board of town or county commissioners or any person interested in
14 any proceeding, investigation, hearing or trial before such board, may take the depositions of all
15 persons whose evidence may be desired for use in said proceeding, investigation, hearing or trial;
16 and to do so, the chairman of such board or such person may apply in person or by attorney to
17 the superior court clerk of that county in which such proceeding, investigation, hearing or trial is
18 pending, for a commission to take the same, and said clerk, upon such application, shall issue
19 such commission, or such deposition may be taken by a notary public of this State or of any other
20 state or foreign country without a commission issuing from the court; and the notice and
21 proceedings upon the taking of said depositions shall be the same as provided for in civil actions;
22 and if the person upon whom the notice of the taking of such deposition is to be served is absent
23 from or cannot after due diligence be found within this State, but can be found within the county
24 in which the deposition is to be taken, then, and in that case, said notice shall be personally served
25 on such person by the commissioner appointed to take such deposition or by the notary taking
26 such deposition, as the case may be; and when any such deposition is returned to the clerk it shall
27 be opened and passed upon by him and delivered to such board, and the reading and using of
28 such deposition shall conform to the rules of the superior court.

29"

30 **SECTION 1.(b)** This section becomes effective December 1, 2025, and applies to
31 offenses committed on or after that date.

32
33 **SEXUAL ASSAULT VICTIM RIGHTS**

34 **SECTION 2.(a)** Article 9 of Chapter 114 of the General Statutes is amended by
35 adding a new section to read:

36 **"§ 114-66. Rights for victims of sexual assault.**

37 (a) Additional Rights. – In addition to any other rights provided by law, a person for
38 whom a sexual assault evidence collection kit has been completed as part of a forensic medical
39 examination has all of the following rights related to the sexual assault evidence collection kit:

- 40 (1) The right to information, upon request, from the appropriate person or entity
41 of the testing status and location of the sexual assault evidence collection kit.
42 (2) The right to receive written notification, upon request, from the appropriate
43 person or entity of the intended destruction or disposal of the kit at least 60
44 days before the date of the intended destruction or disposal.
45 (3) The right to further preservation of the sexual assault evidence collection kit
46 in accordance with G.S. 15A-266.5A.
47 (4) The right to have an advocate or support person present during any court
48 proceedings.

49 The provisions of this subsection apply to both reported and unreported sexual assault
50 examination kits as defined in G.S. 15A-266.5A.

(b) Publishing Notice of Rights. – The Office of the Attorney General shall prepare and publish on its website a list of the rights of victims of sexual assault set forth in this section, Article 20A of Chapter 7B of the General Statutes, and Article 46 of Chapter 15A of the General Statutes. The list required by this subsection shall be in plain language that is easy to understand. Additionally, the Office of the Attorney General shall distribute copies of a written version of the list required under this subsection to hospitals located in the State to provide to every presenting victim of sexual assault. The Office of the Attorney General may update the list required under this subsection as necessary to reflect changes in the applicable law."

SECTION 2.(b) No later than December 1, 2025, the Office of the Attorney General shall prepare and publish the list required under G.S. 114-66(b), as enacted by subsection (a) of this section.

SECTION 2.(c) Subsection (a) of this section becomes effective December 1, 2025, and applies to sexual assault evidence collection kits in the possession of any hospital, law enforcement agency, or the Department of Public Safety on or after that date. The remainder of this section is effective when it becomes law.

DA CONFERENCE MODIFICATIONS

SECTION 3.(a) G.S. 7A-412 reads as rewritten:

"§ 7A-412. Annual meetings; organization; election of officers.

(a) Annual Meetings. – The Conference shall meet annually at a time and place selected by the President of the Conference.

(b) Election of Officers. – Officers of the Conference are a President, ~~a President-elect,~~ a Vice-president, and other officers from among its membership that the Conference may designate in its bylaws. Officers are elected for one-year terms at the annual Conference, and take office on July 1 immediately following their election.

(c) Executive Committee. – The Executive Committee of the Conference consists of the President, ~~the President-elect,~~ the Vice-president, and at least four other members of the Conference. One of these ~~four~~ members shall be the immediate past president if there is one and if ~~he~~ that person continues to be a member.

(d) Organization and Functioning; Bylaws. – The bylaws may provide for the organization and functioning of the Conference, including the powers and duties of its officers and committees. The bylaws shall state the number of members required to constitute a quorum at any meeting of the Conference or the Executive Committee. The bylaws shall set out the procedure for amending the bylaws.

(e) Calling Meetings; Duty to Attend. – The President or the Executive Committee may call a meeting of the Conference upon ~~10-five~~ five days' notice to the members, except upon written waiver of notice signed by at least three-fourths of the members. A member should attend each meeting of the Conference and the Executive Committee of which ~~he~~ the member is given notice. Members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to State employees."

SECTION 3.(b) G.S. 7A-414 reads as rewritten:

"§ 7A-414. Executive Director; ~~clerical support.~~ Director.

The Conference shall employ an Executive Director and any necessary supporting staff to assist it in carrying out its duties. The Executive Director shall be an attorney licensed and eligible to practice in the courts of this State at the time of appointment and at all times during service as the Executive Director."

SECTION 3.(c) This section becomes effective July 1, 2025.

EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.