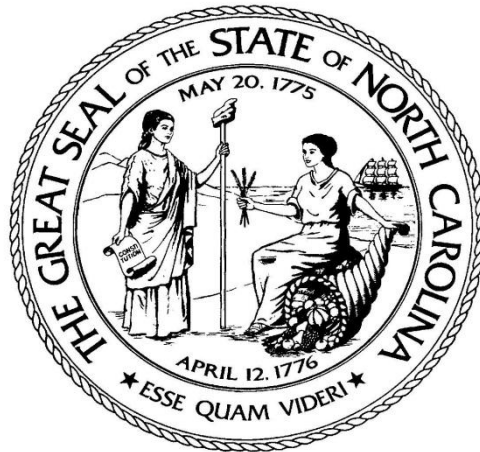


NORTH CAROLINA GENERAL ASSEMBLY



JOINT SELECT STUDY COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE

REPORT TO THE
2011 SESSION
of the
2011 GENERAL ASSEMBLY

JANUARY 2011

TRANSMITTAL LETTER

The Joint Select Study Committee on the Preservation of Biological Evidence respectfully submits the following report.

Representative Rick Glazier
Co-Chair

Senator Edward Jones
Co-Chair

COMMITTEE PROCEEDINGS

Below is a brief summary of the Committee's proceedings. A more detailed record of the Committee's work can be found in the Committee's notebook, located in the Legislative Library.

September 16, 2010

The Committee met at 9:30am in Room 643 of the Legislative Office Building. Roy Cooper, North Carolina Attorney General, gave an update on SBI lab accreditation and staffing. Next, Chris Swecker, Attorney at Law, presented his report entitled, "An Independent Review of the SBI Forensic Laboratory." Greg McLeod, SBI Director, presented an update on SBI improvements over the past few months.

September 30, 2010

The Committee met at 9:30am in Room 643 of the Legislative Office Building. Larry Yates, Principal Program Evaluator, Program Evaluation Division; Michael R. Baylor, Ph.D., Co-Director, Center for Forensic Sciences, RTI International; and Peter R. Stout, Ph.D., Senior Research Toxicologist, Center for Forensic Sciences, RTI International, all presented information on laboratory accreditation. Greg McLeod, SBI Director, gave an overview of the Forensic Serology Section from 2003-present.

October 21, 2010

The Committee met at 9:30am in Room 643 of the Legislative Office Building. Jill Spriggs, President-Elect, American Society of Crime Laboratory Directors, Inc., presented information on forensic crime lab management and operations. Kelly Quick, Research Assistant, presented a survey of state and local crime laboratory accreditation. Hal Pell, Staff Attorney, provided the Committee with information on proposed draft federal reform legislation and the Academy of Sciences report and recommendations. Mr. Pell also reviewed statutes and administrative code provisions from Texas, New York, and Oklahoma and discussed relevant North Carolina statutes regarding forensic lab requirements.

December 7, 2010

The Committee met at 1:00pm in Room 544 of the Legislative Office Building. Greg McLeod, SBI Director, updated the Committee on the SBI Lab Director search. The Committee then discussed potential recommendations.

January 18, 2011

The Committee met at 10:00am in Room 643 of the Legislative Office Building. Susan Sitze, Staff Attorney, summarized the DNA Collection on Arrest statute. Kristine Leggett, Fiscal Analyst, provided an overview of SBI funding. Greg McLeod, SBI Director, presented information on the implementation of the DNA Collection on Arrest statute and provided funding information. The Committee discussed and approved proposed recommendations.

FINDINGS AND RECOMMENDATIONS

Recommendation 1: The Committee recommends that the General Assembly appropriate to the State Bureau of Investigation a total of \$1,403,122 for professional training (\$693,710); external certification and accreditation (\$236,871); and salary and benefits for an Ombudsman position (\$110,000).

Recommendation 2: The Committee recommends that the General Assembly appropriate to the State Bureau of Investigation a total of \$2,647,295 for the replacement of scientific equipment (\$2,144,937) and automation system upgrades (\$502,358).

Recommendation 3: The Committee recommends that the Director of the SBI and Laboratory continue to meet with members of the defense bar and prosecution in a working group to develop a process for FLAIRS access by defense counsel with the goal that 2-3 pilots be authorized by this working group within the next six months.

Recommendation 4: The Committee recommends that the external investigation requirement for Coverdell grants be met immediately by use of the ombudsman and that internal investigations even by internal affairs staff of the SBI no longer meet that standard.

Recommendation 5: The Committee recommends that the Attorney General form an Advisory Board on the Practice of Forensic Law, to advise the Director of the SBI and the Attorney General of North Carolina. In consultation with the Ombudsman, the Board should seek to systematize the communications between prosecutorial agencies, the defense bar, law enforcement agencies, the lab director, SBI Director and the Attorney General, so that when problems and issues arise they can be addressed and resolved. The Board should be able to assess the needs of the forensic community statewide, consider the forensic law implications of federal and state court decisions and statutes, and new technologies as they develop. The Board should meet as designated by the Attorney General, but at a minimum meet on a quarterly basis if not more frequently.

Recommendation 6: The Committee recommends that, although the recommendations regarding the State Bureau of Investigation Crime Laboratory are complete, the original work of the committee on issues of biological evidence preservation around the State should be continued at the legislative level in the next interim, between the 2011 and 2012 Regular Sessions.

Recommended Legislation (see Appendix)

1. A BILL TO BE ENTITLED AN ACT TO: (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME LABORATORY, (4) CREATE THE POSITION OF OMBUDSMAN TO INSURE THAT THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE STATE CRIME LABORATORY, (5) CLARIFY STATUTES THAT ALLOW FOR THE ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (6) CLARIFY THE STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE, AND (7) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE FORENSIC SCIENCES ACT OF 2011." [2011-RKz-17]

MEMBERSHIP LIST

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Speaker's Appointments

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Mint Hill, NC 28227

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Public Member

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Public Member

Staff to Committee

Hal Pell, Research Division
Susan Sitze, Research Division
Kelly Quick, Research Division
Kristine Leggett, Fiscal Research
Larry Yates, Program Evaluation

AUTHORIZATION LETTER

Marc Basnight
President Pro
Tempore,
North Carolina Senate



Joe Hackney
Speaker,
North Carolina
House of
Representatives

Raleigh, North Carolina 27601-1096

Joint Select Study Committee on the Preservation of Biological Evidence

Section 1. The **Joint Select Study Committee on the Preservation of Biological Evidence** (hereinafter "Committee") is established by the President Pro Tempore of the Senate and the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1), Rule 31 of the Rules of the Senate of the 2009 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of 21 members. The President Pro Tempore of the Senate shall appoint 11 members to the Committee, including 5 members of the Senate and 6 public members. The Speaker of the House of Representatives shall appoint 10 members to the Committee, including 5 members of the House of Representatives and 5 public members. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint a co-chair from among their respective appointees. A co-chair or other member of the Committee continues to serve until a successor is appointed. Members serve at the pleasure of the appointing officer.

President Pro Tempore Appointments	Speaker of the House Appointments
Senator Ed Jones, Co-Chair	Representative Rick Glazier, Co-Chair
Senator Fletcher Hartsell	Representative Phillip Haire
Senator Ellie Kinnaird	Representative Darren Jackson
Senator Floyd McKissick	Representative Mickey Michaux
Senator John Snow	Representative Paul Stam
The Attorney General or the Attorney General's designee	The Director of the SBI or the Director's designee
The Director of the Administrative Office of the Courts or the Director's designee	The President of the North Carolina Association of Clerks of Superior Court or the President's designee
The President of the North Carolina Association of Chiefs of Police or the President's designee	The President of the North Carolina Sheriffs' Association or the President's designee

The President of North Carolina Advocates for Justice or the President's designee.	Tom Keith (North Carolina District Attorney)
Dewey Hudson (North Carolina District Attorney)	Judge Pat Devine (Public Member)
Beverly Hafer (Public Member)	

Section 3. The Committee may review the following matters related to the preservation of DNA and biological evidence:

- (1) The costs associated with the promulgation of minimum guidelines for the retention and preservation of biological evidence.
- (2) Emerging technologies with regard to the retention and preservation of biological evidence.
- (3) Procedures for the interagency transfer of biological evidence.
- (4) Any other topic the Committee believes is related to its purpose.

Section 4. The Committee shall meet upon the call of its House and Senate co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5 and 138-6, as appropriate.


Section 7. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. Individual expenses of five thousand dollars (\$5,000) or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of five thousand dollars (\$5,000) shall be paid upon the written approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives and the Director of Legislative Assistants of the Senate shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives at any time by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives, prior to the convening of the 2011 General Assembly, by filing a copy of the report with the Office of the President Pro Tempore of the Senate, the Office of the Speaker of the House of Representatives, and the Legislative Library. The Committee shall terminate upon the convening of the 2011 General Assembly or upon the filing of its final report, whichever occurs first.

Effective this the 7th day of October, 2010.



Marc Basnight
President Pro Tempore of the Senate



Joe Hackney
Speaker of the House of Representatives

APPENDIX

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-RKz-17 [v.4] (01/24)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/26/2011 10:19:08 AM

Short Title: Forensic Sciences Act. (Public)

Sponsors: Representatives Glazier, Stam, Michaux, and Jackson (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

1 AN ACT TO: (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY
2 BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN
3 ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF
4 FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF
5 INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME
6 LABORATORY, (4) CREATE THE POSITION OF OMBUDSMAN TO INSURE THAT
7 THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE
8 STATE CRIME LABORATORY, (5) CLARIFY STATUTES THAT ALLOW FOR THE
9 ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (6) CLARIFY THE
10 STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION
11 RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO
12 PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE,
13 AND (7) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE
14 PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS RECOMMENDED BY THE
15 JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL
16 EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE
17 FORENSIC SCIENCES ACT OF 2011."

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** This act shall be known as "The Forensic Sciences Act of 2011."

20 **SECTION 2.** Article 4 of Chapter 114 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 114.16.1. Forensic Science Advisory Board.**

23 **(a) Creation and Membership. – The North Carolina Forensic Science Advisory Board**
24 **(Board) is hereby established as an advisory board within the Department of Justice. The Board**
25 **shall consist of 16 members, consisting of the State Crime Laboratory Director, and 15**
26 **members appointed by the Attorney General as follows:**

27 **(1) A forensic scientist or any other person, with an advanced degree, who has**
28 **received substantial education, training, or experience in the subject of**
29 **laboratory standards or quality assurance regulation and monitoring.**

30 **(2) The Chief Medical Examiner of the State.**

- 1 (3) A forensic scientist with an advanced degree who has received substantial
2 education, training, or experience in the discipline of molecular biology.
- 3 (4) A forensic scientist with an advanced degree and having experience in the
4 discipline of population genetics.
- 5 (5) A scientist with an advanced degree and having experience in the discipline
6 of forensic chemistry.
- 7 (6) A scientist with an advanced degree and having experience in the discipline
8 of forensic biology.
- 9 (7) A forensic scientist or any other person, with an advanced degree who has
10 received substantial education, training, or experience in the discipline of
11 trace evidence.
- 12 (8) A scientist with a doctoral degree and having experience in the discipline of
13 forensic toxicology, who is certified by the American Board of Forensic
14 Toxicologists.
- 15 (9) A member of the Board of the International Association for Identification.
- 16 (10) A member of the Board of the Association of Firearms and Toolmark
17 Examiners.
- 18 (11) A member of the International Association of Chemical Testing.
- 19 (12) A director of a private or federal forensic laboratory located in the State.
- 20 (13) A member of the American Society of Crime Laboratory Directors.
- 21 (14) A member of the Academy of Forensic Sciences.
- 22 (15) A member of the American Statistical Association.

23 A chairman shall be elected from among the members appointed and staff shall be
24 provided by the Department of Justice.

25 (b) Meetings. – The Board shall meet quarterly and at such other times and places as it
26 determines. Members of the Board cannot designate a proxy to vote in their absence.

27 (c) Terms. – Members of the Board initially appointed shall serve the following terms:
28 four members shall serve a term of one year, four members shall serve a term of two years, and
29 four members shall serve a term of four years. Thereafter, all appointments shall be for a term
30 of four years. A vacancy other than by expiration of term shall be filled by the Attorney
31 General for the unexpired term. Members of the Board cannot designate a proxy to vote in their
32 absence.

33 (d) Expenses. – Members of the Board shall be paid reasonable and necessary
34 expenses incurred in the performance of their duties. Members of the Board who are State
35 officers or employees shall receive no compensation for serving on the Board, but may be
36 reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are
37 full-time salaried public officers or employees other than State officers or employees shall
38 receive no compensation for serving on the Commission, but may be reimbursed for their
39 expenses in accordance with G.S. 138-5(b). All other members of the Commission may
40 receive compensation and reimbursement for expenses in accordance with G.S. 138-5.

41 (e) Functions. – The Board may review State Crime Laboratory operations and make
42 recommendations concerning the services furnished to user agencies. The Board shall review
43 and make recommendations as necessary to the Laboratory Director concerning any of the
44 following:

- 45 (1) New scientific programs, protocols, and methods of testing.
- 46 (2) Plans for the implementation of new programs; sustaining existing programs
47 and improving upon them where possible; and the elimination of programs
48 which are no longer needed.

1 (3) Protocols for testing and examination methods, and guidelines for the
2 presentation of results in court.

3 (4) Qualification standards for the various forensic scientists of the Laboratory.

4 (f) Review Process. -- Upon request of the Laboratory Director, the Board shall review
5 analytical work, reports, and conclusions of scientists employed by the Laboratory. Records
6 reviewed by this Board retain their confidential status and continue to be considered records of
7 a criminal investigation as defined in G.S. 132-1.4. These records shall only be reviewed in a
8 closed session meeting pursuant to G.S. 143-318.11 of the Board and each member of the
9 Board shall, prior to receiving any documents to review, sign a confidentiality agreement
10 agreeing to maintain the confidentiality of and not to disclose the documents nor the contents
11 of the documents reviewed. The Board shall recommend to the Laboratory a review process to
12 use when there is a request that the Laboratory re-test or re-examine evidence that has been
13 previously examined by the Laboratory."

14 **SECTION 3.** The State Bureau of Investigation shall encourage and seek
15 collaborative opportunities and grant funds for research programs, in association whenever
16 possible with the university system or independent nationally recognized forensic institutions,
17 on human observer bias and sources of human error in forensic examinations. Such programs
18 might include studies to determine the effects of contextual bias in forensic practice (*e.g.*,
19 studies to determine whether and to what extent the results of forensic analysis are influenced
20 by knowledge regarding the background of the suspect and the investigator's theory of the
21 case). In addition, research on sources of human error should be closely linked with research
22 conducted to quantify and characterize the amount of error. Based on the results of these
23 studies, and in consultation with the North Carolina Forensic Sciences Advisory Board, the
24 North Carolina State Crime Laboratory should develop standard operating procedures (that will
25 lay the foundation for model protocols) to minimize, to the extent possible, potential bias and
26 sources of human error in forensic science. These standard operating procedures should apply
27 to all forensic analyses that may be used in litigation.

28 **SECTION 4.** Individual certification of forensic science professionals at the State
29 Crime Laboratory shall be mandatory as soon as practicable, but no later than June 1, 2012,
30 unless not available consistent with international and ISO standards. All such forensic science
31 professionals shall have access to the certification process.

32 **SECTION 5.** The Revisor of Statutes shall replace the name of the State Bureau of
33 Investigation Laboratory or any other name which is identified with the State Bureau of
34 Investigation Laboratory, with the name "North Carolina State Crime Laboratory" wherever
35 first used in a statute or session law, and with "State Crime Laboratory" at each subsequent
36 location in the statute or session law.

37 **SECTION 6.** The position of ombudsman is created in the North Carolina State
38 Crime Laboratory within the NC Department of Justice. The primary purpose of this position
39 shall be to work with defense counsel, prosecutorial agencies, criminal justice system
40 stakeholders, law enforcement officials and the general public to ensure all processes,
41 procedures, practices and protocols at the laboratory are consistent with state and federal law,
42 best forensic law practices, and are in the best interests of justice in this state. The ombudsman
43 shall mediate complaints brought to the attention of the ombudsman between the SBI and
44 defense counsel, prosecutorial agencies, law enforcement agencies, and the general public. The
45 ombudsman shall ensure all criminal justice stakeholders and the general public are aware of
46 the availability, responsibilities, and role of the ombudsman and shall regularly attend meetings
47 of the Conferences of the District Attorneys, District and Superior Court Judges, Public
48 Defenders, and the Advocates for Justice and Bar Criminal Law Sections. The ombudsman

1 shall make recommendations on a regular basis to the Director of the State Crime Laboratory,
2 Director of the SBI, and Attorney General of North Carolina as to policies, procedures,
3 practices, and training of employees needed at the laboratory to ensure compliance with state
4 and federal law, best forensic law practices, and to resolve any meritorious systemic complaints
5 received by the ombudsman.

6 **SECTION 7.** G.S. 8-58.20 reads as rewritten:

7 **"§ 8-58.20. Forensic analysis admissible as evidence.**

8 (a) In any criminal prosecution, a laboratory report of a written forensic analysis,
9 including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's
10 DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and
11 that is signed and sworn to by the person performing the analysis may be admissible in
12 evidence without the testimony of the analyst who prepared the report in accordance with the
13 requirements of this section.

14 (b) A forensic analysis, to be admissible under this section, shall be performed ~~in~~
15 ~~accordance with rules or procedures adopted by the State Bureau of Investigation, or by another~~
16 ~~laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory~~
17 ~~Accreditation Board (ASCLD/LAB) by a laboratory that is accredited by an accrediting body~~
18 ~~that requires conformance to forensic specific requirements and which is a signatory to the~~
19 ~~International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement~~
20 ~~For Testing~~ for the submission, identification, analysis, and storage of forensic analyses. The
21 analyses of DNA samples and typing results of DNA samples shall be performed ~~in accordance~~
22 ~~with the rules or procedures of the State Bureau of Investigation or other~~
23 ~~ASCLD/LAB accredited laboratory. by a laboratory that is accredited by an accrediting body~~
24 ~~that requires conformance to forensic specific requirements and which is a signatory to the~~
25 ~~International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement~~
26 ~~For Testing.~~

27 (c) The analyst who analyzes the forensic sample and signs the report shall complete an
28 affidavit on a form developed by the State Bureau of Investigation. In the affidavit, the analyst
29 shall state (i) that the person is qualified by education, training, and experience to perform the
30 analysis, (ii) the name and location of the laboratory where the analysis was performed, and
31 (iii) that performing the analysis is part of that person's regular duties. The analyst shall also
32 aver in the affidavit that the tests were performed pursuant to the ~~ASCLD/LAB accrediting~~
33 ~~body's~~ standards for that discipline and that the evidence was handled in accordance with
34 established and accepted procedures while in the custody of the laboratory. The affidavit shall
35 be sufficient to constitute prima facie evidence regarding the person's qualifications. The
36 analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the
37 investigating officer and the district attorney in the prosecutorial district in which the criminal
38 charges are pending. An affidavit by a forensic analyst sworn to and properly executed before
39 an official authorized to administer oaths is admissible in evidence without further
40 authentication in any criminal proceeding with respect to the forensic analysis administered and
41 the procedures followed.

42"

43 **SECTION 8.** G.S. 20-139.1(c2) reads as rewritten:

44 "(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be
45 performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation,~~
46 ~~or by another laboratory accredited by the American Society of Crime Laboratory~~
47 ~~Directors/Laboratory Accreditation Board (ASCLD/LAB) by a laboratory that is accredited by~~
48 ~~an accrediting body that requires conformance to forensic specific requirements and which is a~~

1 [signatory to the International Laboratory Accreditation Cooperation \(ILAC\) Mutual](#)
2 [Recognition Arrangement For Testing](#) for the submission, identification, analysis, and storage
3 of forensic analyses."

4 **SECTION 9. G.S. 15A-903 reads as rewritten:**

5 **"§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

6 (a) Upon motion of the defendant, the court must order the State to:

7 (1) Make available to the defendant the complete files of all law enforcement
8 and prosecutorial agencies involved in the investigation of the crimes
9 committed or the prosecution of the defendant.

10 a. The term "file" includes the defendant's statements, the codefendants'
11 statements, witness statements, investigating officers' notes, results of
12 tests and examinations, or any other matter or evidence obtained
13 during the investigation of the offenses alleged to have been
14 committed by the defendant. When any matter or evidence is
15 submitted for testing or examination, in addition to any test or
16 examination results, all other data, calculations, or writings of any
17 kind shall be made available to the defendant, including, but not
18 limited to, preliminary test or screening results and bench notes.

19 b. The term "prosecutorial agency" includes any public or private entity
20 that obtains information on behalf of a law enforcement agency or
21 prosecutor in connection with the investigation of the crimes
22 committed or the prosecution of the defendant.

23 c. Oral statements shall be in written or recorded form, except that oral
24 statements made by a witness to a prosecuting attorney outside the
25 presence of a law enforcement officer or investigatorial assistant
26 shall not be required to be in written or recorded form unless there is
27 significantly new or different information in the oral statement from
28 a prior statement made by the witness.

29 d. The defendant shall have the right to inspect and copy or photograph
30 any materials contained therein and, under appropriate safeguards, to
31 inspect, examine, and test any physical evidence or sample contained
32 therein.

33 (2) Give notice to the defendant of any expert witnesses that the State
34 reasonably expects to call as a witness at trial. Each such witness shall
35 prepare, and the State shall furnish to the defendant, a report of the results of
36 any examinations or tests conducted by the expert. The State shall also
37 furnish to the defendant the expert's curriculum vitae, the expert's opinion,
38 and the underlying basis for that opinion. The State shall give the notice and
39 furnish the materials required by this subsection within a reasonable time
40 prior to trial, as specified by the court.

41 (3) Give the defendant, at the beginning of jury selection, a written list of the
42 names of all other witnesses whom the State reasonably expects to call
43 during the trial. Names of witnesses shall not be subject to disclosure if the
44 State certifies in writing and under seal to the court that to do so may subject
45 the witnesses or others to physical or substantial economic harm or coercion,
46 or that there is other particularized, compelling need not to disclose. If there
47 are witnesses that the State did not reasonably expect to call at the time of
48 the provision of the witness list, and as a result are not listed, the court upon

1 a good faith showing shall allow the witnesses to be called. Additionally, in
2 the interest of justice, the court may in its discretion permit any undisclosed
3 witness to testify.

4 (b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure
5 shall be to the same extent as required by subsection (a) of this section.

6 (c) Upon request by the State, a law enforcement or prosecutorial agency shall make
7 available to the State a complete copy of the complete files related to the investigation of the
8 crimes committed or the prosecution of the defendant for compliance with this section and any
9 disclosure under G.S. 15A-902(a). All public and private entities that obtain such information
10 shall ensure that all subsection (a)(1) material is fully disclosed to the referring prosecutorial
11 agency for disclosure to the defendant.

12 (d) A knowing and voluntary omission or misrepresentation by any person in
13 connection with this section constitutes an obstruction of justice, and is punishable as provided
14 by law."

15 **SECTION 10.** G.S. 114-16 reads as rewritten:

16 **"§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of**
17 **scientists, etc., employed by State; radio system.**

18 In the said Bureau there shall be provided laboratory facilities for the analysis of evidences
19 of crime, including the determination of presence, quantity and character of poisons, the
20 character of bloodstains, microscopic and other examination material associated with the
21 commission of crime, examination and analysis of projectiles of ballistic imprints and records
22 which might lead to the determination or identification of criminals, the examination and
23 identification of fingerprints, and other evidence leading to the identification, apprehension, or
24 conviction of criminals. A sufficient number of persons skilled in such matters shall be
25 employed to render a reasonable service to the ~~prosecuting officers of the State public and the~~
26 criminal justice system in the discharge of their duties. In the personnel of the Bureau shall be
27 included a sufficient number of persons of training and skill in the investigation of crime and in
28 the preparation of evidence as to be of service to local enforcement officers, under the direction
29 of the Governor, in criminal matters of major importance.

30 The laboratory and clinical facilities of the institutions of the State, both educational and
31 departmental, shall be made available to the Bureau, and scientists and doctors now working
32 for the State through its institutions and departments may be called upon by the Governor to aid
33 the Bureau in the evaluation, preparation, and preservation of evidence in which scientific
34 methods are employed, and a reasonable fee may be allowed by the Governor for such service.

35 The State radio system shall be made available to the Bureau for use in its work."

36 **SECTION 11.** Sections 1 through 5, and 7 through 11 are effective when this act
37 becomes law, and Section 6 is effective July 1, 2011. Nothing in this act is intended to amend
38 or modify either the statutory or common law applicable to discovery in criminal cases which
39 was applicable prior to the effective date of this act. Prosecutions for offenses committed
40 before the effective date of this act are not abated or affected by this act, and the statutes that
41 would be applicable but for this act remain applicable to those prosecutions.