

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 235
Mar 8, 2021
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40155-ND-14D*

Short Title: Evidence/Dist. Ct Speedy Trials.

(Public)

Sponsors: Representative Arp.

Referred to:

A BILL TO BE ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

Whereas, a forensic or chemical analyst serving as a witness in a district court 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 ...

17 (b) Remote Testimony ~~Authorized.~~ Authorized in General. – In any criminal proceeding,
18 the testimony of an analyst regarding the results of forensic testing admissible pursuant to
19 G.S. 8-58.20, and reported by that analyst, shall be permitted by remote testimony in real time if
20 all of the following occur:

21 ...

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

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

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

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

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

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

47 (d) Nothing in this section shall preclude the right of any party to call any ~~witness-witness,~~
48 except an analyst regarding the results of forensic testing and the testimony of each person in the
49 associated chain of custody made available via remote testimony in real time in district court
50 pursuant to this section.

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

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

5 "**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**
6 **provisions; controlled-drinking programs.**

7 ...

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

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

- 20 (1) The State notifies the defendant no later than 15 business days after receiving
21 the report and at least 15 business days before the proceeding at which the
22 evidence would be used of its intention to introduce the report into evidence
23 under this subsection and provides a copy of the report to the ~~defendant,~~
24 and defendant.
- 25 (2) The defendant fails to file a written objection with the court, with a copy to
26 the State, at least five business days before the proceeding at which the report
27 would be used that the defendant objects to the introduction of the report into
28 evidence.

29 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
30 a written objection as provided in this subsection, then the objection shall be deemed waived and
31 the report shall be admitted into evidence without the testimony of the analyst. Upon filing a
32 timely objection, the admissibility of the report shall be determined and governed by the
33 appropriate rules of evidence.

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

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

43 Nothing in this subsection precludes the right of any party to call any ~~witness-witness, except~~
44 a chemical analyst, or to introduce any evidence supporting or contradicting the evidence
45 contained in the report.

46 ...

47 (c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary
48 Witnesses. –

49 ...

- 50 (4) Nothing in this subsection precludes the right of any party to call any ~~witness~~
51 or ~~witness, except an analyst regarding the results of chemical testing and the~~

1 testimony of each person in the associated chain of custody made available
2 via remote testimony in real time in district court pursuant to this subsection.
3 Nothing in this subsection precludes the right of any party to introduce any
4 evidence supporting or contradicting the evidence contained in the statement.

5 ...

6 (c5) The testimony of an analyst regarding the results of a chemical analysis of blood or
7 urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, shall be
8 permitted by remote testimony, as defined in G.S. 15A-1225.3, in all administrative hearings,
9 and in any court, if all of the following occur:

10 ...

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

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

20 ~~Nothing in this section-subsection shall preclude the right of any party to call any witness-~~
21 ~~witness, except an analyst regarding the results of chemical testing and the testimony of each~~
22 ~~person in the associated chain of custody made available via remote testimony in real time in~~
23 ~~district court pursuant to this subsection.~~ Nothing in this subsection shall obligate the
24 Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to
25 remote testimony absent an appropriation of funds for that purpose.

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

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 subsections (c1) and (c3) of this section.

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

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

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

47 ...

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

50 (1) The State notifies the defendant no later than 15 business days after receiving
51 the affidavit and at least 15 business days before the proceeding at which the

1 affidavit would be used of its intention to introduce the affidavit into evidence
2 under this subsection and provides a copy of the affidavit to the ~~defendant,~~
3 ~~and defendant.~~

4 ...

5 The failure to file a timely objection as provided in this subsection shall be deemed a waiver
6 of the right to object to the admissibility of the affidavit, and the affidavit shall be admitted into
7 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
8 of the report shall be determined and governed by the appropriate rules of evidence. The case
9 shall be continued until the analyst can be present. The criminal case shall not be dismissed due
10 to the failure of the analyst to appear, unless the analyst willfully fails to appear after being
11 ordered to appear by the court. If the proceeding at which the affidavit would be introduced into
12 evidence under this subsection is continued, the notice provided by the State, the written
13 objection filed by the defendant, or the failure of the defendant to file a written objection shall
14 remain effective at any subsequent calendaring of that proceeding.

15 Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party
16 to call any ~~witness or witness, except an analyst regarding the results of chemical testing and the~~
17 ~~testimony of each person in the associated chain of custody made available via remote testimony~~
18 ~~in real time in district court pursuant to this subsection. Nothing in subsection (e1) or subsection~~
19 ~~(e2) of this section precludes the right of any party to introduce any evidence supporting or~~
20 ~~contradicting the evidence contained in the affidavit.~~

21"

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