

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

H.B. 868
Apr 9, 2025
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH30359-ND-92A

Short Title: Due Process in LEO Field Drug Testing. (Public)

Sponsors: Representative Rubin.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO GUIDE THE USE AND SUBSEQUENT ADMISSIBILITY OF
3 COLORIMETRIC FIELD DRUG TESTS PURSUANT TO CRIMINAL
4 INVESTIGATIONS AND PROSECUTIONS.

5 Whereas, a study at the Quattrone Center at University of Pennsylvania Law School
6 found that approximately 773,000 drug-related arrests nationwide involve the use of presumptive
7 drug field tests; and

8 Whereas, the same study finds that these tests are known to produce false positives,
9 suggesting as many as 30,000 arrests per year of people who do not actually possess illegal
10 substances; and

11 Whereas, this error rate is potentially the largest contributing factor to wrongful
12 arrests and convictions in the United States; and

13 Whereas, any path to addressing the concerns over presumptive field tests and
14 providing due process must still ensure law enforcement has the tools to combat the fentanyl
15 crisis and other dangerous controlled substances; Now, therefore,
16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** G.S. 90-95 reads as rewritten:

18 "**§ 90-95. Violations; penalties.**

19 (a) Except as authorized by this Article, it is unlawful for any person:

20 ...

21 (3) To possess a controlled substance.

22 ...

23 (f1) Unless the context requires otherwise, for purposes of this section, the following
24 definitions shall apply:

25 (1) Colorimetric field drug test. – A field-testing drug kit that consists of color
26 test reagents for the preliminary identification of narcotic drugs in their pure
27 or diluted forms. It does not apply to kits that use thin layer chromatography
28 as the identification procedure or to kits that identify drugs in body fluids.

29 (2) Corroborating chemical analysis. – A chemical analysis following a
30 colorimetric field drug test used to confirm or contradict the veracity of a
31 colorimetric field drug test, when that chemical analysis has been performed
32 by the North Carolina State Crime Laboratory or any other crime laboratory
33 meeting similar standards of scientific testing and court-related evidence
34 preparation and preservation.

35 (f2) No later than January 1, 2026, all law enforcement agencies and prosecutorial districts
36 in the State shall adopt policies governing the arrest and prosecution of violations of



1 G.S. 90-95(a)(3) that ensure reliable and accurate identification of controlled substances for the
2 purpose of maintaining the integrity of convictions for those violations. The policies adopted
3 pursuant to this subsection shall include, at a minimum, each of the following:

4 (1) Prior to the results of a corroborating chemical analysis, a colorimetric field
5 drug test shall not be sufficient, by itself, for the determination of any of the
6 following:

7 a. Probable cause to arrest.

8 b. Initiating charges.

9 c. Conviction.

10 d. Sentencing following a conviction.

11 (2) When a colorimetric field drug test has been conducted and there has been no
12 corroborating chemical analysis, in the absence of any conflicting statutory
13 provision, individuals charged shall be either:

14 a. Cited and released, when citation is permitted by law for the alleged
15 crimes of the individual.

16 b. Released upon the defendant's written promise to appear in court
17 pursuant to the setting of conditions of pretrial release under
18 G.S. 15A-534 and other applicable statutes.

19 Criminal process issued or conditions of release set pursuant to this
20 subdivision shall only be required for crimes charged under G.S. 90-95(a)(3)
21 and shall not be construed to apply to the criminal process or conditions of
22 pretrial release for any other crimes for which the individual is charged or
23 arrested.

24 (3) Any individual charged shall be entitled to plead to the charge and
25 subsequently withdraw that plea and move for dismissal of the charges in the
26 event of a corroborating chemical analysis that finds there was no controlled
27 substance in the sample of the test at any time during the pendency of the case
28 or subsequent entry of the plea.

29"

30 **SECTION 2.** Part 1 of Article 26 of Chapter 15A of the General Statutes is amended
31 by adding a new section to read:

32 "**§ 15A-534.9. Possession of controlled substances; bail and pretrial release.**

33 When conditions of pretrial release are being determined for a defendant charged with a
34 violation of G.S. 90-95(a)(3), the conditions of pretrial release for that specific charge shall
35 comply with the provisions of G.S. 90-95(f2)."

36 **SECTION 3.** This act becomes effective December 1, 2025, and applies to offenses
37 committed on or after that date.