

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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HOUSE BILL 868

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

Sponsors: Representatives Rubin and Chesser (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 10, 2025

A BILL TO BE ENTITLED

AN ACT TO GUIDE THE USE AND SUBSEQUENT ADMISSIBILITY OF
COLORIMETRIC FIELD DRUG TESTS PURSUANT TO CRIMINAL
INVESTIGATIONS AND PROSECUTIONS.

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

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

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

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

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

"§ 90-95. **Violations; penalties.**

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

...

(3) To possess a controlled substance.

...

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

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

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



1 (f2) No later than January 1, 2026, all law enforcement agencies and prosecutorial districts
2 in the State shall adopt policies governing the arrest and prosecution of violations of
3 G.S. 90-95(a)(3) that ensure reliable and accurate identification of controlled substances for the
4 purpose of maintaining the integrity of convictions for those violations. The policies adopted
5 pursuant to this subsection shall include, at a minimum, each of the following:

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

9 a. Probable cause to arrest.

10 b. Initiating charges.

11 c. Conviction.

12 d. Sentencing following a conviction.

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

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

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

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

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

31 "

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

34 **"§ 15A-534.9. Possession of controlled substances; bail and pretrial release.**

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

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