

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021**

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**HOUSE BILL 235  
PROPOSED COMMITTEE SUBSTITUTE H235-CSBH-6 [v.4]  
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Short Title: Evidence/Dist. Ct Speedy Trials.

(Public)

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Sponsors:

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Referred to:

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March 9, 2021

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



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authenticate evidence being submitted to the court by one or more adversarial parties of a court proceeding; and

Whereas, a forensic or chemical analyst, and each person in the chain of custody of evidence produced by the analyst, does not play a role in initiating a criminal charge against a criminal defendant or in deciding whether or not to prosecute a criminal defendant; and

Whereas, a criminal proceeding based upon a misdemeanor charge, including a criminal trial, often occurs in district court before a district court judge, who is the finder of fact and the finder of law; and

Whereas, in superior court a defendant may exercise the defendant's right to a trial by jury, along with other rights, the exercise of which is unavailable in district court; and

Whereas, the North Carolina General Assembly finds that in order to safeguard a criminal defendant's right to proceedings free from unreasonable delay, it is reasonable and prudent to allow forensic and chemical analysts, and each person in the chain of custody of evidence produced by the analysts, to provide real-time, remote, two-way audio and video testimony before the district courts of this State using state-of-the-art technology and equipment that enable the criminal defendant, the judge, and the attorneys in the case to observe the demeanor of the forensic analyst throughout the direct examination and cross-examination of the forensic analyst, and that enable the forensic analyst to likewise observe the demeanor of the criminal defendant; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.** The General Assembly finds all of the following:

- (1) All criminal defendants have the right to court proceedings free from unreasonable delay, a right that is in jeopardy due to a perpetual district court case backlog.
- (2) The North Carolina court system is bifurcated into the district and superior courts, and 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.
- (3) In a criminal proceeding in district court, the finder of fact is the district court judge presiding over the proceeding, who is legally trained to weigh the credibility, relevance, and veracity of evidence, including witness testimony.
- (4) Simultaneous, two-way audio and video remote testimony in real time using state-of-the-art technology allows a defendant to observe and cross-examine a witness, a district court judge to observe and question a witness to weigh the credibility and veracity of the witness's testimony, and a witness to observe a defendant against whom the witness is testifying.
- (5) The testimony of a forensic or chemical analyst is based upon objective, scientifically based testing that allows the analyst to reach dispassionate conclusions that may be presumed reliable and trustworthy.
- (6) The testimony of a witness called to establish the chain of custody of evidence is not adversarial in nature and merely conveys the fact of a ministerial function performed by the witness in the course of the witness's work.
- (7) Upon conviction in a criminal proceeding in district court, a defendant may appeal to superior court for a trial de novo, retaining all rights that had previously been afforded the criminal defendant in district court.

**SECTION 2.** G.S. 8-58.20 reads as rewritten:

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

(a) In any criminal prosecution, a laboratory report of a written forensic analysis, including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's 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 (a) Definitions. – The following definitions apply to this section:

17 (1) Criminal proceeding. – Any hearing or trial in superior court in a prosecution  
18 of a person charged with violating a criminal law of this State and any hearing  
19 or proceeding conducted under Subchapter II of Chapter 7B of the General  
20 Statutes where a juvenile is alleged to have committed an offense that would  
21 be a criminal offense if committed by an adult.

22 (1a) District court proceeding. – Any hearing or trial in district court in a  
23 prosecution of a person charged with violating a criminal law of this State.

24 (2) Remote testimony. – A method by which a forensic analyst testifies from a  
25 location other than the location where the hearing or trial is being conducted  
26 and outside the physical presence of a party or parties.

27 (b) Remote Testimony in Real Time Authorized. ~~Authorized for Criminal Proceeding.~~ –  
28 In any criminal proceeding, the testimony of an analyst regarding the results of forensic testing  
29 admissible pursuant to G.S. 8-58.20, and reported by that analyst, shall be permitted by remote  
30 testimony if all of the following occur:

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 G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full  
34 laboratory report package provided to the district attorney.

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

39 (3) The defendant's attorney of record, or the defendant if that person has no  
40 attorney, fails to file a written objection with the court, with a copy to the  
41 State, at least five business days before the proceeding at which the testimony  
42 will be presented that the defendant objects to the introduction of the remote  
43 testimony.

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

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

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

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

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

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

(d) Nothing in this section shall preclude the right of any party to call any ~~witness-witness~~, except an analyst regarding the results of forensic testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in a district court proceeding pursuant to subsection (b1) of this section.

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

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

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

...

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

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

(1) The State notifies the defendant no later than 15 business days after receiving the report and at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the ~~defendant,~~ and defendant.

(2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the report would be used that the defendant objects to the introduction of the report into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and

the report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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

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

Nothing in this subsection precludes the right of any party to call any ~~witness-witness~~, except a chemical analyst in district court as provided in subsection (c6) of this section, or to introduce any evidence supporting or contradicting the evidence contained in the report.

...

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

...

(4) Nothing in this subsection precludes the right of any party to call any ~~witness or witness~~, except an analyst regarding the results of chemical testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to subsection (c6) of this section. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the statement.

...

(c5) ~~The~~ Except as provided in subsection (c6) of this section, testimony of an analyst regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, shall be permitted by remote testimony, as defined in G.S. 15A-1225.3, in all administrative hearings, and in any superior court if all of the following occur:

...

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

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

Nothing in this section shall preclude the right of any party to call any witness. Nothing in this subsection shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose.

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

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by subsections (c1) and (c3) of this section.

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

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

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

Nothing in this subsection shall preclude the right of any party to call any witness, except an analyst regarding the results of chemical testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to this subsection.

...

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

(1) The State notifies the defendant no later than 15 business days after receiving the affidavit and at least 15 business days before the proceeding at which the affidavit would be used of its intention to introduce the affidavit into evidence under this subsection and provides a copy of the affidavit to the ~~defendant,~~ and defendant.

...

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

Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to call any ~~witness or~~ witness, except an analyst regarding the results of chemical testing and the testimony of each person in the associated chain of custody made available via remote testimony in real time in district court pursuant to subsection (c6) of this section. Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the affidavit.

...."

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