



HOUSE BILL 235: Evidence/Dist. Ct Speedy Trials.

2021-2022 General Assembly

Committee:	House Judiciary 4. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 31, 2021
Introduced by:	Reps. Arp, Blackwell, C. Smith, Bell	Prepared by:	Jeremy Ray
Analysis of:	PCS to First Edition H235-CSBH-6		Committee Co-Counsel

OVERVIEW: *House Bill 235 would require remote testimony by a lab analyst in a criminal proceeding in district court regarding the results of forensic or chemical testing to be admissible, if the State has provided the defendant or their attorney with a copy of the lab report, and notice at least 15 business days prior to the proceeding that it intends to introduce the testimony of the lab analyst using remote testimony in real time.*

The PCS to House Bill 235 would create a standalone definition for "district court proceeding" to ensure that only adult criminal district court proceedings are impacted by the remote testimony changes provided in the bill and would make other conforming and clarifying changes throughout to ensure remote testimony changes apply only to district court.

BACKGROUND: The Sixth Amendment of the U.S. Constitution and Article I of the N.C. Constitution provide criminal defendants the right to directly confront adverse witnesses, to cross-examine adverse witnesses, and to be present at any stage of the trial that would enable the defendant to effectively cross-examine adverse witnesses.

Testimonial hearsay evidence in a criminal trial violates a defendant's right to confrontation under the Sixth Amendment, unless: (1) the witness is available, or (2) the witness is unavailable but the defendant had a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36 (2004).

Testimonial hearsay evidence includes:

- certificates of analysis stating the results of State laboratory tests and blood alcohol reports;
- forensic reports by a nontestifying analyst identifying a substance as a controlled substance or specifying its weight;
- chemical analyst affidavits when the analyst does not testify at trial;
- written records prepared by a nontestifying evidence custodian to establish chain of custody.

Under U.S. Supreme Court case *Maryland v. Craig*, a criminal defendant has the right to confront adversarial witnesses (including lab analysts) unless: (1) a witness's physical absence is necessary to further an important public policy, and (2) the reliability of the testimony is otherwise assured. *Maryland v. Craig*, 497 U.S. 836 (1990). The North Carolina Court of Appeals has held that remote testimony is controlled by *Craig*, not *Crawford*.

CURRENT LAW: Article 3 of Chapter 20 and Article 73 of Chapter 15A govern the admissibility of remote testimony by lab analysts.

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Under current law, the State in any superior or district court criminal proceeding may introduce remote testimony of a lab analyst regarding the results of forensic or chemical testing, if all of the following requirements are satisfied:

- The State has provided a copy of the lab report to the defendant or their attorney.
- The State has notified the defendant or their attorney at least 15 days prior to the proceeding where the evidence would be used of its intention to introduce the remote testimony of the lab analyst into evidence.
- The defendant or their attorney fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding where the remote testimony will be presented, indicating that the defendant objects to the introduction of the remote testimony.

If a defendant files a written objection that satisfies the third prong above, the State may not introduce remote testimony of a lab analyst over the objection of the defendant.

BILL ANALYSIS: House Bill 235 would require that remote testimony provided by a lab analyst must be permitted in district court for non-juvenile criminal court proceedings, if the State satisfies the following requirements:

- The State has provided a copy of the lab report to the defendant or their attorney.
- The State has notified the defendant or their attorney at least 15 days prior to the proceeding where the evidence would be used of its intention to introduce the remote testimony of the lab analyst into evidence.

A defendant would be precluded from requiring that a lab analyst or any person in the associated chain of custody for a forensic or chemical analysis appear in-person to give testimony in district court if the lab analyst or person is made available via remote testimony in real time and the State satisfies the notice requirements set forth in the two prongs above.

Remote testimony authorized under this bill would be required to be of sufficient quality as to allow the district court judge and all parties to observe the demeanor of the lab analyst as the lab analyst testifies, in a similar manner as if the lab analyst were testifying in the location where the hearing or trial is being conducted. The district court judge would be required to ensure that the defendant or their attorney has a full and fair opportunity for examination and cross-examination of the witness.

Remote testimony authorized under the bill could not bind a superior court and could not be used to determine the admissibility of evidence in superior court. This includes questions of admissibility in a trial de novo in superior court from cases arising from the district court division. Remote testimony authorized under this bill would not apply to juvenile cases that are conducted in a district court.

EFFECTIVE DATE: This act would become effective when it becomes law and apply to criminal proceedings, administrative hearings, and adjudicatory hearings in juvenile court beginning on or after that date.

**Sarah Pilon, Committee Co-Counsel to House Judiciary IV, substantially contributed to this summary.*