

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE BILL 780

Short Title: Innocence Commn/Case Files & Evidence. (Public)

Sponsors: Representatives Glazier, Jackson, Lucas, and Michaux (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary.

April 7, 2011

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THE STATE TO PRESERVE AND MAKE AVAILABLE TO THE
2 NORTH CAROLINA INNOCENCE INQUIRY COMMISSION CERTAIN CASE FILES
3 AND EVIDENCE, TO REQUIRE THE NORTH CAROLINA INNOCENCE INQUIRY
4 COMMISSION TO PRESERVE THOSE FILES AND EVIDENCE, AND TO ALLOW
5 THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION TO TEST
6 EVIDENCE AND UPLOAD TEST RESULTS THAT COMPLY WITH FEDERAL
7 CRITERIA TO CODIS.

8
9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 15A-268(b) reads as rewritten:

11 "(b) The custodial agency required to preserve evidence pursuant to subsection (a1) of
12 this section may dispose of the evidence prior to the expiration of the period of time described
13 in subsection (a6) of this section if all of the following conditions are met:

14 (1) The custodial agency sent notice of its intent to dispose of the evidence to
15 the district attorney in the county in which the conviction was obtained.

16 (1a) The custodial agency has determined that it has no duty to preserve the
17 evidence under G.S. 15A-1471.

18 (2) The district attorney gave to each of the following persons written
19 notification of the intent of the custodial agency to dispose of the evidence:
20 any defendant convicted of a felony who is currently incarcerated in
21 connection with the case, the defendant's counsel of record for that case, and
22 the Office of Indigent Defense Services. The notice shall be consistent with
23 the provisions of this section, and the district attorney shall send a copy of
24 the notice to the custodial agency. Delivery of written notification from the
25 district attorney to the defendant was effectuated by the district attorney
26 transmitting the written notification to the superintendent of the correctional
27 facility where the defendant was assigned at the time and the
28 superintendent's personal delivery of the written notification to the
29 defendant. Certification of delivery by the superintendent to the defendant in
30 accordance with this subdivision was in accordance with subsection (c) of
31 this section.

32 (3) The written notification from the district attorney specified the following:

33 a. That the custodial agency would destroy the evidence collected in
34 connection with the case unless the custodial agency received a
35 written request that the evidence not be destroyed.



- 1 b. The address of the custodial agency where the written request was to
2 be sent.
- 3 c. That the written request from the defendant, or his or her
4 representative, must be received by the custodial agency within 90
5 days of the date of receipt by the defendant of the district attorney's
6 written notification.
- 7 d. That the written request must ask that the evidence not be destroyed
8 or disposed of for one of the following reasons:
- 9 1. The case is currently on appeal.
- 10 2. The case is currently in postconviction proceedings.
- 11 3. The defendant will file a motion for DNA testing pursuant to
12 G.S. 15A-269 within 180 days of the postmark of the
13 defendant's response to the district attorney's written
14 notification of the custodial agency's intent to dispose of the
15 evidence, unless a request for extension is requested by the
16 defendant and agreed to by the custodial agency.
- 17 4. The case has been referred to the North Carolina Innocence
18 Inquiry Commission pursuant to Article 92 of Chapter 15A of
19 the General Statutes.

- 20 (4) The custodial agency did not receive a written request in compliance with
21 the conditions set forth in sub-subdivision (3)d. of this subsection within 90
22 days of the date of receipt by the defendant of the district attorney's written
23 notification."

24 **SECTION 2.** Article 92 of Chapter 15A of the General Statutes is amended by
25 adding a new section to read:

26 "**§ 15A-1471. Preservation of files and evidence; production of files and evidence; forensic
27 and DNA testing.**

28 (a) Upon receiving written notice from the Commission of a Commission inquiry, the
29 State shall preserve all files and evidence subject to disclosure under G.S. 15A-903. Once the
30 Commission provides written notice to the State that the Commission's inquiry is complete, the
31 duty to preserve under this section shall cease; however, other preservation requirements may
32 be applicable.

33 (b) The Commission is entitled to a copy of all records preserved under subsection (a)
34 of this section, including access to inspect and examine all physical evidence.

35 (c) Upon request of the Commission, the State shall transfer custody of physical
36 evidence to the Commission's Director, or the Director's designee, for forensic and DNA
37 testing. The Commission shall preserve evidence in a manner reasonably calculated to prevent
38 contamination or degradation of any biological evidence that might be present, while subject to
39 a continuous chain of custody and securely retained with sufficient official documentation to
40 locate the evidence. At or prior to the completion of the Commission's inquiry, the Commission
41 shall return all remaining evidence.

42 (d) The Commission shall have the right to subject physical evidence to forensic and
43 DNA testing, including consumption of biological material, as necessary for the Commission's
44 inquiry. If testing complies with FBI requirements and the data meets NDIS criteria, profiles
45 obtained from the testing shall be searched and uploaded to CODIS."

46 **SECTION 3.** This act is effective when it becomes law.