

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

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SENATE BILL 40\*

Short Title: Forensic Sciences Act. (Public)

Sponsors: Senators Jones, Hartsell, McKissick; Apodaca, Atwater, D. Berger, Blue, Graham, Kinnaird, Purcell, Stein, Tillman, Vaughan, and White.

Referred to: Judiciary I.

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) CREATE THE NORTH CAROLINA FORENSIC SCIENCE ADVISORY BOARD, (2) ENCOURAGE EFFORTS TO ELIMINATE SOURCES OF HUMAN ERROR IN FORENSIC EXAMINATIONS, (3) REQUIRE CERTIFICATION OF FORENSIC SCIENCE PROFESSIONALS, (4) RENAME THE STATE BUREAU OF INVESTIGATION LABORATORY AS THE NORTH CAROLINA STATE CRIME LABORATORY, (5) CREATE THE POSITION OF OMBUDSMAN TO ENSURE THAT THE BEST FORENSIC PROCESSES AND PROCEDURES ARE UTILIZED IN THE STATE CRIME LABORATORY, (6) CLARIFY STATUTES THAT ALLOW FOR THE ADMISSIBILITY OF FORENSIC ANALYSES INTO EVIDENCE, (7) CLARIFY THE STATE'S OBLIGATION TO DISCLOSE TO THE DEFENDANT ALL INFORMATION RELATING TO THE TESTING OR EXAMINATION OF EVIDENCE AND TO PENALIZE OMISSION OR MISREPRESENTATION RELATING TO DISCLOSURE, AND (8) CLARIFY THAT STATE CRIME LABORATORY PERSONNEL SERVE THE PUBLIC AND THE CRIMINAL JUSTICE SYSTEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON THE PRESERVATION OF BIOLOGICAL EVIDENCE, AND TO PROVIDE THAT THE ACT SHALL BE ENTITLED "THE FORENSIC SCIENCES ACT OF 2011."

The General Assembly of North Carolina enacts:

**SECTION 1.** This act shall be known as "The Forensic Sciences Act of 2011."

**SECTION 2.** Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

**"§ 114-16.1. Forensic Science Advisory Board.**

(a) Creation and Membership. – The North Carolina Forensic Science Advisory Board (Board) is hereby established as an advisory board within the Department of Justice. The Board shall consist of 16 members, consisting of the State Crime Laboratory Director, and 15 members appointed by the Attorney General as follows:

- (1) A forensic scientist or any other person with an advanced degree who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring.
- (2) The Chief Medical Examiner of the State.
- (3) A forensic scientist with an advanced degree who has received substantial education, training, or experience in the discipline of molecular biology.
- (4) A forensic scientist with an advanced degree who has experience in the discipline of population genetics.



- 1           (5) A scientist with an advanced degree who has experience in the discipline of  
2           forensic chemistry.
- 3           (6) A scientist with an advanced degree who has experience in the discipline of  
4           forensic biology.
- 5           (7) A forensic scientist or any other person with an advanced degree who has  
6           received substantial education, training, or experience in the discipline of  
7           trace evidence.
- 8           (8) A scientist with a doctoral degree who has experience in the discipline of  
9           forensic toxicology and is certified by the American Board of Forensic  
10           Toxicologists.
- 11           (9) A member of the International Association for Identification.
- 12           (10) A member of the Association of Firearms and Toolmark Examiners.
- 13           (11) A member of the International Association of Chemical Testing.
- 14           (12) A director of a private or federal forensic laboratory located in the State.
- 15           (13) A member of the American Society of Crime Laboratory Directors.
- 16           (14) A member of the Academy of Forensic Sciences.
- 17           (15) A member of the American Statistical Association.

18           A chairman shall be elected from among the members appointed, and staff shall be  
19           provided by the Department of Justice.

20           (b) Meetings. – The Board shall meet quarterly and at such other times and places as it  
21           determines. Members of the Board cannot designate a proxy to vote in their absence.

22           (c) Terms. – Members of the Board initially appointed shall serve the following terms:  
23           four members shall serve a term of one year; four members shall serve a term of two years; and  
24           four members shall serve a term of four years. Thereafter, all appointments shall be for a term  
25           of four years. A vacancy other than by expiration of term shall be filled by the Attorney  
26           General for the unexpired term. Members of the Board cannot designate a proxy to vote in their  
27           absence.

28           (d) Expenses. – Members of the Board shall be paid reasonable and necessary expenses  
29           incurred in the performance of their duties. Members of the Board who are State officers or  
30           employees shall receive no compensation for serving on the Board but may be reimbursed for  
31           their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried  
32           public officers or employees other than State officers or employees shall receive no  
33           compensation for serving on the Commission but may be reimbursed for their expenses in  
34           accordance with G.S. 138-5(b). All other members of the Commission may receive  
35           compensation and reimbursement for expenses in accordance with G.S. 138-5.

36           (e) Functions. – The Board may review State Crime Laboratory operations and make  
37           recommendations concerning the services furnished to user agencies. The Board shall review  
38           and make recommendations as necessary to the Laboratory Director concerning any of the  
39           following:

- 40           (1) New scientific programs, protocols, and methods of testing.
- 41           (2) Plans for the implementation of new programs; sustaining existing programs  
42           and improving upon them where possible; and the elimination of programs  
43           which are no longer needed.
- 44           (3) Protocols for testing and examination methods and guidelines for the  
45           presentation of results in court.
- 46           (4) Qualification standards for the various forensic scientists of the Laboratory.

47           (f) Review Process. – Upon request of the Laboratory Director, the Board shall review  
48           analytical work, reports, and conclusions of scientists employed by the Laboratory. Records  
49           reviewed by this Board retain their confidential status and continue to be considered records of  
50           a criminal investigation as defined in G.S. 132-1.4. These records shall be reviewed only in a  
51           closed session meeting pursuant to G.S. 143-318.11 of the Board, and each member of the

1 Board shall, prior to receiving any documents to review, sign a confidentiality agreement  
2 agreeing to maintain the confidentiality of and not to disclose the documents nor the contents of  
3 the documents reviewed. The Board shall recommend to the Laboratory a review process to use  
4 when there is a request that the Laboratory retest or reexamine evidence that has been  
5 previously examined by the Laboratory."

6 **SECTION 3.** The State Bureau of Investigation (SBI) shall encourage and seek  
7 collaborative opportunities and grant funds for research programs, in association whenever  
8 possible with the university system or independent nationally recognized forensic institutions,  
9 on human observer bias and sources of human error in forensic examinations. Such programs  
10 might include studies to determine the effects of contextual bias in forensic practice (e.g.,  
11 studies to determine whether and to what extent the results of forensic analysis are influenced  
12 by knowledge regarding the background of the suspect and the investigator's theory of the  
13 case). In addition, research on sources of human error should be closely linked with research  
14 conducted to quantify and characterize the amount of error. Based on the results of these  
15 studies, and in consultation with the North Carolina Forensic Sciences Advisory Board, the  
16 North Carolina State Crime Laboratory should develop standard operating procedures (that will  
17 lay the foundation for model protocols) to minimize, to the extent possible, potential bias and  
18 sources of human error in forensic science. These standard operating procedures should apply  
19 to all forensic analyses that may be used in litigation.

20 **SECTION 4.** Individual certification of forensic science professionals at the State  
21 Crime Laboratory shall be mandatory as soon as practicable, but no later than June 1, 2012,  
22 unless not available consistent with international and ISO standards. All such forensic science  
23 professionals shall have access to the certification process.

24 **SECTION 5.** The Revisor of Statutes shall replace the name of the State Bureau of  
25 Investigation Laboratory, or any other name which is identified with the State Bureau of  
26 Investigation Laboratory, with the name "North Carolina State Crime Laboratory" wherever  
27 first used in a statute or session law and with "State Crime Laboratory" at each subsequent  
28 location in the statute or session law.

29 **SECTION 6.** The position of ombudsman is created in the North Carolina State  
30 Crime Laboratory within the North Carolina Department of Justice. The primary purpose of  
31 this position shall be to work with defense counsel, prosecutorial agencies, criminal justice  
32 system stakeholders, law enforcement officials, and the general public to ensure all processes,  
33 procedures, practices, and protocols at the Laboratory are consistent with State and federal law,  
34 best forensic law practices, and in the best interests of justice in this State. The ombudsman  
35 shall mediate complaints brought to the attention of the ombudsman between the SBI and  
36 defense counsel, prosecutorial agencies, law enforcement agencies, and the general public. The  
37 ombudsman shall ensure all criminal justice stakeholders and the general public are aware of  
38 the availability, responsibilities, and role of the ombudsman and shall regularly attend meetings  
39 of the Conferences of the District Attorneys, District and Superior Court Judges, Public  
40 Defenders, the Advocates for Justice, and Bar Criminal Law Sections. The ombudsman shall  
41 make recommendations on a regular basis to the Director of the State Crime Laboratory,  
42 Director of the SBI, and Attorney General of North Carolina as to policies, procedures,  
43 practices, and training of employees needed at the laboratory to ensure compliance with State  
44 and federal law, best forensic law practices, and to resolve any meritorious systemic complaints  
45 received by the ombudsman.

46 **SECTION 7.** G.S. 8-58.20 reads as rewritten:

47 **"§ 8-58.20. Forensic analysis admissible as evidence.**

48 (a) In any criminal prosecution, a laboratory report of a written forensic analysis,  
49 including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's  
50 DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and  
51 that is signed and sworn to by the person performing the analysis may be admissible in

1 evidence without the testimony of the analyst who prepared the report in accordance with the  
2 requirements of this section.

3 (b) A forensic analysis, to be admissible under this section, shall be performed ~~in~~  
4 ~~accordance with rules or procedures adopted by the State Bureau of Investigation, or by another~~  
5 ~~laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory~~  
6 ~~Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by an accrediting body  
7 that requires conformance to forensic specific requirements and which is a signatory to the  
8 International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement  
9 For Testing for the submission, identification, analysis, and storage of forensic analyses. The  
10 analyses of DNA samples and typing results of DNA samples shall be performed ~~in accordance~~  
11 ~~with the rules or procedures of the State Bureau of Investigation or other~~  
12 ~~ASCLD/LAB-accredited laboratory.~~ by a laboratory that is accredited by an accrediting body  
13 that requires conformance to forensic specific requirements and which is a signatory to the  
14 International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement  
15 For Testing.

16 (c) The analyst who analyzes the forensic sample and signs the report shall complete an  
17 affidavit on a form developed by the State Bureau of Investigation. In the affidavit, the analyst  
18 shall state (i) that the person is qualified by education, training, and experience to perform the  
19 analysis, (ii) the name and location of the laboratory where the analysis was performed, and  
20 (iii) that performing the analysis is part of that person's regular duties. The analyst shall also  
21 aver in the affidavit that the tests were performed pursuant to the ~~ASCLD/LAB-accrediting~~  
22 ~~body's~~ standards for that discipline and that the evidence was handled in accordance with  
23 established and accepted procedures while in the custody of the laboratory. The affidavit shall  
24 be sufficient to constitute prima facie evidence regarding the person's qualifications. The  
25 analyst shall attach the affidavit to the laboratory report and shall provide the affidavit to the  
26 investigating officer and the district attorney in the prosecutorial district in which the criminal  
27 charges are pending. An affidavit by a forensic analyst sworn to and properly executed before  
28 an official authorized to administer oaths is admissible in evidence without further  
29 authentication in any criminal proceeding with respect to the forensic analysis administered and  
30 the procedures followed.

31 ...."

32 **SECTION 8.** G.S. 20-139.1(c2) reads as rewritten:

33 "(c2) A chemical analysis of blood or urine, to be admissible under this section, shall be  
34 performed ~~in accordance with rules or procedures adopted by the State Bureau of Investigation,~~  
35 ~~or by another laboratory accredited by the American Society of Crime Laboratory~~  
36 ~~Directors/Laboratory Accreditation Board (ASCLD/LAB)~~ by a laboratory that is accredited by  
37 an accrediting body that requires conformance to forensic specific requirements and which is a  
38 signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual  
39 Recognition Arrangement For Testing for the submission, identification, analysis, and storage  
40 of forensic analyses."

41 **SECTION 9.** G.S. 15A-903 reads as rewritten:

42 **"§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

43 (a) Upon motion of the defendant, the court must order the State to:

44 (1) Make available to the defendant the complete files of all law enforcement  
45 and prosecutorial agencies involved in the investigation of the crimes  
46 committed or the prosecution of the defendant.

47 a. The term "file" includes the defendant's statements, the codefendants'  
48 statements, witness statements, investigating officers' notes, results of  
49 tests and examinations, or any other matter or evidence obtained  
50 during the investigation of the offenses alleged to have been  
51 committed by the defendant. When any matter or evidence is

1                    submitted for testing or examination, in addition to any test or  
2                    examination results, all other data, calculations, or writings of any  
3                    kind shall be made available to the defendant, including, but not  
4                    limited to, preliminary test or screening results and bench notes.

5                    b.     The term "prosecutorial agency" includes any public or private entity  
6                    that obtains information on behalf of a law enforcement agency or  
7                    prosecutor in connection with the investigation of the crimes  
8                    committed or the prosecution of the defendant.

9                    c.     Oral statements shall be in written or recorded form, except that oral  
10                    statements made by a witness to a prosecuting attorney outside the  
11                    presence of a law enforcement officer or investigational assistant  
12                    shall not be required to be in written or recorded form unless there is  
13                    significantly new or different information in the oral statement from  
14                    a prior statement made by the witness.

15                    d.     The defendant shall have the right to inspect and copy or photograph  
16                    any materials contained therein and, under appropriate safeguards, to  
17                    inspect, examine, and test any physical evidence or sample contained  
18                    therein.

19                    (2)     Give notice to the defendant of any expert witnesses that the State  
20                    reasonably expects to call as a witness at trial. Each such witness shall  
21                    prepare, and the State shall furnish to the defendant, a report of the results of  
22                    any examinations or tests conducted by the expert. The State shall also  
23                    furnish to the defendant the expert's curriculum vitae, the expert's opinion,  
24                    and the underlying basis for that opinion. The State shall give the notice and  
25                    furnish the materials required by this subsection within a reasonable time  
26                    prior to trial, as specified by the court.

27                    (3)     Give the defendant, at the beginning of jury selection, a written list of the  
28                    names of all other witnesses whom the State reasonably expects to call  
29                    during the trial. Names of witnesses shall not be subject to disclosure if the  
30                    State certifies in writing and under seal to the court that to do so may subject  
31                    the witnesses or others to physical or substantial economic harm or coercion,  
32                    or that there is other particularized, compelling need not to disclose. If there  
33                    are witnesses that the State did not reasonably expect to call at the time of  
34                    the provision of the witness list, and as a result are not listed, the court upon  
35                    a good faith showing shall allow the witnesses to be called. Additionally, in  
36                    the interest of justice, the court may in its discretion permit any undisclosed  
37                    witness to testify.

38                    (b)     If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure  
39                    shall be to the same extent as required by subsection (a) of this section.

40                    (c)     Upon request by the State, a law enforcement or prosecutorial agency shall make  
41                    available to the State a complete copy of the complete files related to the investigation of the  
42                    crimes committed or the prosecution of the defendant for compliance with this section and any  
43                    disclosure under G.S. 15A-902(a). All public and private entities that obtain such information  
44                    shall ensure that all subsection (a)(1) material is fully disclosed to the referring prosecutorial  
45                    agency for disclosure to the defendant.

46                    (d)     A knowing and voluntary omission or misrepresentation by any person in  
47                    connection with this section constitutes an obstruction of justice and is punishable as provided  
48                    by law."

49                    **SECTION 10.** G.S. 114-16 reads as rewritten:

50                    **"§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of**  
51                    **scientists, etc., employed by State; radio system.**

1 In the said Bureau there shall be provided laboratory facilities for the analysis of evidences  
2 of crime, including the determination of presence, quantity and character of poisons, the  
3 character of bloodstains, microscopic and other examination material associated with the  
4 commission of crime, examination and analysis of projectiles of ballistic imprints and records  
5 which might lead to the determination or identification of criminals, the examination and  
6 identification of fingerprints, and other evidence leading to the identification, apprehension, or  
7 conviction of criminals. A sufficient number of persons skilled in such matters shall be  
8 employed to render a reasonable service to the ~~prosecuting officers of the State public and the~~  
9 criminal justice system in the discharge of their duties. In the personnel of the Bureau shall be  
10 included a sufficient number of persons of training and skill in the investigation of crime and in  
11 the preparation of evidence as to be of service to local enforcement officers, under the direction  
12 of the Governor, in criminal matters of major importance.

13 The laboratory and clinical facilities of the institutions of the State, both educational and  
14 departmental, shall be made available to the Bureau, and scientists and doctors now working  
15 for the State through its institutions and departments may be called upon by the Governor to aid  
16 the Bureau in the evaluation, preparation, and preservation of evidence in which scientific  
17 methods are employed, and a reasonable fee may be allowed by the Governor for such service.

18 The State radio system shall be made available to the Bureau for use in its work."

19 **SECTION 11.** Sections 1 through 5 and 7 through 11 are effective when this act  
20 becomes law, and Section 6 becomes effective July 1, 2011. Nothing in this act is intended to  
21 amend or modify either the statutory or common law applicable to discovery in criminal cases  
22 which was applicable prior to the effective date of this act. Prosecutions for offenses  
23 committed before the effective date of this act are not abated or affected by this act, and the  
24 statutes that would be applicable but for this act remain applicable to those prosecutions.