

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 164

Short Title: Innocence Protection Act.

(Public)

Sponsors: Senators Ballance; Clodfelter, Dannelly, Gulley, Kinnaird, Lucas, Rand, Shaw of Cumberland, and Soles.

Referred to: Judiciary II.

February 19, 2001

A BILL TO BE ENTITLED

1 AN ACT TO ASSIST AN INNOCENT PERSON CHARGED WITH OR WRONGLY
2 CONVICTED OF A CRIMINAL OFFENSE IN ESTABLISHING THE PERSON'S
3 INNOCENCE AND TO AMEND THE LAW PROVIDING COMPENSATION TO
4 THE PERSON FOR A WRONGFUL CONVICTION.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 15A-266.5 is amended by adding a new subsection to
8 read:

9 "(c) For criminal defense purposes, the defendant, including the representative of
10 the defendant, in a criminal action or proceeding shall have access to information in the
11 State DNA Database or Databank relating to the number of requests previously made
12 for a comparison search and the name and identity of the requesting party."

13 **SECTION 2.** G.S. 15A-266.10(a) reads as rewritten:

14 ~~"(a) Any person whose DNA record or profile has been included in the State~~
15 ~~Database and whose DNA sample is stored in the State Databank may apply for~~
16 ~~expungement on the grounds that the felony conviction that resulted in the inclusion of~~
17 ~~the person's DNA record or profile in the State Database or the inclusion of the person's~~
18 ~~DNA sample in the State Databank has been reversed and the case dismissed. The~~
19 ~~person, either individually or through an attorney, may apply to the court for~~
20 ~~expungement of the record as provided in G.S. 15A-146. A copy of the application for~~
21 ~~expungement shall be served on the district attorney for the judicial district in which the~~
22 ~~felony conviction was obtained not less than 20 days prior to the date of the hearing on~~
23 ~~the application. A certified copy of the order reversing and dismissing the conviction~~
24 ~~shall be attached to an order of expungement.~~

25 (a) Upon receipt of notification of a reversal of conviction and dismissal of the
26 case or of the granting of a pardon of an individual whose DNA record or profile has
27 been included in the State DNA Database and whose DNA sample is stored in the State

1 DNA Databank, the DNA sample shall be expunged. The DNA record, and any
2 samples, analyses, or other documents relating to the record, whether in the possession
3 of the State DNA Database or Databank, any law enforcement or police agency, or any
4 forensic DNA laboratory, including any duplicates or copies, shall be returned to the
5 individual, or to the attorney who represented the individual at the time the reversal or
6 pardon was granted. The order reversing and dismissing the conviction or the
7 instrument granting the pardon shall be accompanied by an order of expungement, and a
8 certified copy shall be provided to the SBI. The SBI shall adopt procedures to comply
9 with this section."

10 **SECTION 3.** Article 13 of Chapter 15A of the General Statutes is amended
11 by adding the following new sections to read:

12 **"§ 15A-267. Access to DNA samples from crime scene.**

13 (a) A criminal defendant or the defendant's representative shall have access
14 before trial to any DNA samples and analyses performed in connection with the case in
15 which the defendant is charged.

16 (b) The court, in response to a motion for such comparison by a defendant, shall
17 order that DNA information from a crime scene sample obtained in the course of the
18 investigation of an alleged crime be checked against the DNA records and profiles
19 maintained by or available through the State DNA Database and Databank and the
20 national DNA index system, and that the results of the check be disclosed to the
21 defendant and to the prosecutor whose jurisdiction includes the location of the alleged
22 commission of the crime, upon a showing by the defendant that the analysis may be
23 material to the defendant's defense and that the request is reasonable.

24 **"§ 15A-268. Preservation of samples of biological materials.**

25 (a) Notwithstanding any other provision of law and subject to subsection (b) of
26 this section, a governmental entity that, in the course of a criminal investigation, collects
27 evidence containing DNA shall preserve any biological material secured in connection
28 with the criminal case for the period of time the person remains incarcerated in
29 connection with that case. The governmental entity may determine how the evidence is
30 retained pursuant to this section, provided that the evidence is retained in a condition
31 suitable for DNA testing.

32 (b) The governmental entity may dispose of biological material before the
33 expiration of the period of time described in subsection (a) of this section if all the
34 conditions set forth below are met:

35 (1) The governmental entity notifies all of the following persons of the
36 provision of this section and of the intention of the governmental entity
37 to dispose of the material: any person, who as a result of a felony
38 conviction in the case is currently serving a term of imprisonment and
39 who remains incarcerated in connection with the case, any counsel of
40 record, the public defender in the county of conviction, the district
41 attorney in the county of conviction, and the Attorney General.

42 (2) The notifying entity does not receive, within 90 days of sending the
43 notification, a request under penalty of perjury that the material not be
44 destroyed or disposed of because the declarant will file within 180

1 days a motion for DNA testing pursuant to G.S. 15A-269 that is
2 followed within 180 days by a motion for DNA testing pursuant to
3 G.S. 15A-269, unless a request for extension is requested by the
4 convicted person and agreed to by the governmental entity in
5 possession of the evidence.

6 **"§ 15A-269. Request for post-conviction DNA testing.**

7 (a) A defendant may make a motion before the trial court that entered the
8 judgment of conviction in the defendant's case for performance of forensic DNA testing
9 of any biological material that:

10 (1) Is related to the investigation or prosecution that resulted in the
11 judgment; or

12 (2) Meets either of the following conditions:

13 a. It was not tested previously.

14 b. It was tested previously, but the requested DNA test would
15 provide results that are reasonably more discriminating and
16 probative of the identity of the perpetrator or accomplice or
17 have a reasonable probability of contradicting prior test results.

18 (b) The court shall grant the application for forensic DNA testing of such
19 evidence upon its determination that if a DNA test had been conducted on the evidence,
20 and if the results had been admitted in the trial resulting in the judgment there exists a
21 reasonable probability that the verdict would have been more favorable to the
22 defendant.

23 (c) In cases in which the defendant has been convicted of first degree murder and
24 is in custody awaiting imposition of the death penalty, the State shall perform forensic
25 DNA testing of any biological material that:

26 (1) Is related to the investigation or prosecution that resulted in the
27 judgment; or

28 (2) Meets either of the following conditions:

29 a. It was not tested previously.

30 b. It was tested previously, but the requested DNA test would
31 provide results that are reasonably more discriminating and
32 probative of the identity of the perpetrator or accomplice or
33 have a reasonable probability of contradicting prior test results.

34 At the request of either the prosecution or the defense, the testing shall be performed
35 before an execution date is set, and the results of the testing shall be provided to all
36 counsel and to the Governor before the execution is carried out.

37 (d) The court shall appoint counsel for the person who brings a motion under this
38 section if that person is indigent.

39 (e) The cost of DNA testing ordered under this section shall be borne by the State
40 or the applicant, as the court may order in the interests of justice, if it is shown that the
41 applicant is not indigent and possesses the ability to pay.

42 (f) DNA testing ordered by the court pursuant to this section shall be done as
43 soon as practicable. However, if the court finds that a miscarriage of justice will
44 otherwise occur and that it is necessary in the interests of justice to give priority to the

1 DNA testing, the court may order that the SBI be required to give priority to the DNA
2 testing ordered pursuant to this section.

3 **"§ 15A-270. Post-test procedures.**

4 (a) If the results of DNA testing conducted under this section are unfavorable to
5 the applicant, the court:

6 (1) Shall dismiss the application; and

7 (2) In the case of an applicant who is not indigent, may assess the
8 applicant for the cost of the testing.

9 (b) If the results of DNA testing conducted under this section are favorable to the
10 applicant, the court:

11 (1) Shall order a hearing, notwithstanding any provision of law that would
12 bar the hearing; and

13 (2) Shall enter any order that serves the interests of justice, including an
14 order:

15 a. Vacating and setting aside the judgment;

16 b. Discharging the applicant, if the applicant is in custody;

17 c. Presentencing the applicant; and

18 d. Granting a new trial."

19 **SECTION 4.** G.S. 148-82 reads as rewritten:

20 **"§ 148-82. Provision for compensation.**

21 Any person who, having been convicted of a felony and having been imprisoned
22 therefor in a State prison of this State, and who was thereafter or who shall hereafter be
23 granted a pardon of innocence by the Governor upon any of the grounds listed below,
24 ~~that the crime with which the person was charged either was not committed at all or was~~
25 ~~not committed by that person,~~ may as hereinafter provided present by petition a claim
26 against the State for the pecuniary loss sustained by the person through his or her
27 erroneous conviction and imprisonment, provided the petition is presented within five
28 years of the granting of the ~~pardon.~~ pardon:

29 (1) The crime with which the person was charged either was not
30 committed at all or was not committed by that person.

31 (2) The conviction of the person was reversed or set aside on the ground
32 that the person was not guilty of the offense for which the person was
33 convicted.

34 (3) The person was found not guilty of the offense in a new trial or
35 rehearing."

36 **SECTION 5.** G.S. 148-84 reads as rewritten:

37 **"§ 148-84. Evidence; action by Industrial Commission; payment and amount of**
38 **compensation.**

39 At the hearing the claimant may introduce evidence in the form of affidavits or
40 testimony to support the claim, and the Attorney General may introduce counter
41 affidavits or testimony in refutation. If the Industrial Commission finds from the
42 evidence that the claimant received a pardon of innocence for the reason that the crime
43 was not committed at all, ~~or~~ was not committed by the claimant, the claimant's
44 conviction was reversed, or the claimant was found not guilty of the offense at a new

1 trial or rehearing, and that the claimant was imprisoned and has been vindicated in
2 connection with the alleged offense for which he or she was imprisoned, the Industrial
3 Commission shall determine the amount the claimant is entitled to be paid for the
4 claimant's pecuniary loss and shall enter an award for that amount. The Director of the
5 Budget shall pay the amount of the award to the claimant out of the Contingency and
6 Emergency Fund, or out of any other available State funds. The Industrial Commission
7 shall award to the claimant an amount equal to ten thousand dollars (\$10,000) for each
8 year or the pro rata amount for the portion of each year of the imprisonment actually
9 served, but in no event shall the compensation exceed a total amount of ~~one hundred~~
10 ~~fifty thousand dollars (\$150,000).~~ five hundred thousand dollars (\$500,000). The
11 Industrial Commission shall give written notice of its decision to all parties concerned.
12 The determination of the Industrial Commission shall be subject to judicial review upon
13 appeal of the claimant or the State according to the provisions and procedures set forth
14 in Article 31 of Chapter 143 of the General Statutes."

15 **SECTION 6.** Article 3 of Chapter 114 of the General Statutes is amended by
16 adding a new section to read:

17 **"§ 114-10.2. Report on administration of capital punishment laws.**

18 (a) The Division of Criminal Statistics shall annually prepare and transmit to the
19 General Assembly and the Governor a report concerning the administration of capital
20 punishment laws by the North Carolina State government.

21 (b) The report required under subsection (a) of this section shall include the
22 following categories of information:

- 23 (1) The percentage of death-eligible cases in which a death sentence is
24 sought and the percentage in which it is imposed by judicial district.
- 25 (2) The race of the defendants in death-eligible cases, including death-
26 eligible cases in which a death sentence is not sought, and the race of
27 the victims.
- 28 (3) An analysis of the composition of juries in capital cases, including the
29 racial composition of the juries, and on the exclusion of otherwise
30 eligible and available jurors from the cases.
- 31 (4) An analysis of the effect of peremptory challenges, by the prosecution
32 and defense respectively, on the composition of juries in capital cases,
33 including the racial composition of the juries, and on the exclusion of
34 otherwise eligible and available jurors from the cases.
- 35 (5) The percentage of capital cases in which counsel is retained by the
36 defendant and the percentage in which counsel is appointed by the
37 court.
- 38 (6) An analysis of the rates of compensation paid in capital cases to
39 appointed counsel by judicial district.
- 40 (7) The percentage of cases in which a death sentence or a conviction
41 underlying a death sentence is vacated, reversed, or set aside and the
42 reasons therefor.

1 (8) The percentage of cases in which a person who was arrested for a
2 crime was later eliminated as a suspect based on DNA evidence, along
3 with the crime for which the person was arrested.

4 (c) The Attorney General shall ensure that the reports referred to in subsection
5 (a) of this section are distributed to State print and broadcast media and posted on an
6 Internet website maintained by the Department of Justice."

7 **SECTION 7.** This act is effective when it becomes law.