

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE DRH11116-LH-131A (03/22)

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

Sponsors: Representative Glazier.

Referred to:

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

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.