



HOUSE BILL 771: Criminal Law Procedures.

2025-2026 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	April 28, 2025
Introduced by:	Rep. Stevens	Prepared by:	Hannah Kendrick
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *House Bill 771 would authorize depositions of certain witnesses for preservation of testimony in criminal actions, provide additional rights for victims of sexual assault, and make modifications to the Conference of District Attorneys.*

CURRENT LAW:

G.S. 8-74 allows for depositions in a criminal action to occur at the request of the defendant if the defendant files an affidavit with the clerk that it is important for the defendant's defense that the testimony of any person be obtained, and if the defendant provides appropriate reason why the attendance of that person cannot be procured at trial or hearing. The prosecution shall have 10 days' notice of the taking of the deposition.

Article 20A of Chapter 7B of the General Statutes and Article 46 of Chapter 15A of the General Statutes provide for the rights of victims in criminal offenses.

BILL ANALYSIS:

House Bill 771 would make various changes to criminal law procedure.

Section 1 would allow the State to depose a witness in a criminal proceeding if the court is satisfied that the testimony of the witness is material to the proceeding and at least one of the following applies:

- The witness is in imminent danger of death or great bodily harm.
- The witness has been threatened with death or great bodily harm.
- The witness is about to leave this State and there are reasonable grounds to believe the witness will be unable to attend a criminal trial or proceeding.
- The witness is so sick or infirm as to create reasonable grounds to believe that the witness will be unable to testify.
- The witness is being detained as a material witness and there are reasonable grounds to believe the witness will flee if released from detention.
- The witness is 65 years of age or older.

The motion to take a deposition would include all of the following:

- The nature of the offense charged.
- The status of the criminal proceedings.
- The name or initials of the witness, unless the court allows for an exception.

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Legislative Analysis
Division
919-733-2578

House Bill 771

Page 2

- That the testimony of the witness is material to the proceeding.
- The proper basis for taking the deposition.

The defense would receive at least 10 days' notice of the hearing. If the court is satisfied that the deposition is authorized by law and necessary to achieve the interests of justice, the court would enter a written order and set a time of not more than 30 days during which the deposition shall be taken. If the defendant does not appear for the hearing in which the motion is to be heard and does not have good cause for the defendant's absence, the court could hear the motion ex parte. Upon motion by either party, the court could designate a judge to preside over the deposition. The defendant would have the right to be present at the deposition unless certain conduct by the defendant occurs.

If the witness is a child, the court could order the deposition be taken in accordance with G.S. 15A-1225.1. If the witness is an individual with an intellectual or developmental disability, the court could order the deposition be taken in accordance with G.S. 15A-1225.2.

The defendant would have a right to counsel for any deposition ordered.

The State or the defendant would be required to make available any statement of the witness being deposed which would be required to be made available if the witness were testifying at the trial.

At the trial or hearing, part or all of the deposition would be admissible if the witness is unavailable. Any deposition would also be admissible to contradict or impeach the testimony of the deponent as a witness. A witness would not be considered unavailable if the absence of such witness is due to the procurement or wrongdoing of the party offering the deposition at the trial or hearing.

Any party would have the right to require that the deposition be recorded and preserved by the use of audiovisual equipment in addition to stenographic record.

These provisions would not preclude the taking of a deposition, orally or upon written questions, or the use of a deposition by agreement of the parties with the consent of the court. Depositions taken in criminal proceedings would only be permitted in exceptional circumstances. If the court finds that any party is using the procedures for the purpose of harassment or delay, the conduct could be punished as contempt of court.

This section would become effective December 1, 2025, and would apply to offenses committed on or after that date.

Section 2 would provide the following additional rights for sexual assault victims for whom a sexual assault evidence collection kit has been completed:

- The right to information, upon request, of the testing status and location of the kit.
- The right to receive written notification of the intended destruction or disposal of the kit at least 60 days before the intended date of destruction or disposal.
- The right to further preservation of the kit.
- The right to have an advocate or support person present during any court proceedings.

The additional rights would apply to both reported and unreported sexual assault examination kits as defined in G.S. 15A-266.5A.

The Office of the Attorney General would be required to prepare and publish on its website a list of the rights of victims of sexual assault set forth in Section 2 of this bill, Article 20A of Chapter 7B of the General Statutes, and Article 46 of Chapter 15A of the General Statutes. The Office of Attorney General

House Bill 771

Page 3

would also be required to provide copies of a written version of this list to hospitals located in the State for distribution to victims of sexual assault.

The Office of Attorney General would be required to publish the list no later than December 1, 2025. The additional rights provided to sexual assault victims would become effective December 1, 2025, and would apply to sexual assault evidence collection kits in the possession of any hospital, law enforcement agency, or the Department of Public Safety on or after that date. The remainder of Section 2 would be effective when it becomes law.

Section 3 would remove “President-elect” from the officers in the Executive Committee of the District of Attorneys Conference. The Executive Committee would be required to consist of at least four other members of the conference, in addition to the President and the Vice-president. The notice that the President must give to the Conference before calling a meeting would decrease from 10 days to five days. This section would become effective July 1, 2025.

EFFECTIVE DATE: Except as otherwise provided, this act would become effective when it becomes law.