



SENATE BILL 308: Amend Various DWI Statutes.

2017-2018 General Assembly

Committee: House Judiciary II	Date: June 20, 2017
Introduced by: Sen. J. Davis	Prepared by: Susan Sitze
Analysis of: Second Edition	Committee Counsel

OVERVIEW: *Senate Bill 308 would amend the statute of limitations for misdemeanor crimes and amend the Rules of Evidence pertaining to expert testimony based on a Horizontal Gaze Nystagmus (HGN) Test in matters of impairment.*

Section 1

CURRENT LAW: G.S. 15-1 currently requires misdemeanors be presented or found by the grand jury within 2 years of the commission of the offense. In 1956, the Supreme Court opinion recognized an extension of this requirement by holding in State v. Underwood that a defendant may also be tried upon a misdemeanor charged by a warrant within 2 years of the offense. Thus, to satisfy the statute of limitations for misdemeanors, an indictment, presentment, or warrant must have been issued within two years of the date of the offense.

BILL ANALYSIS: Senate Bill 308 would amend the statute of limitations for misdemeanors to change the phrase requiring that the misdemeanor be "presented or found by the grand jury" within two years after commission of the offense to state that the misdemeanor must be "charged" within two years of the offense in order to encompass the charging methods that are sufficient under current law, as well as any other methods of charging misdemeanors such as by magistrate's order or citation.

BACKGROUND: On December 6, 2016 the North Carolina Court of Appeals decided State v. Turner, in which a defendant cited for driving while impaired was charged by way of a magistrate's order moved to have his case dismissed pursuant to the statute of limitations after two years had passed from the date of the offense. The Court of Appeals upheld the trial court's dismissal on the grounds that the defendant had not been charged by indictment, presentment, or warrant within two years of the offense. On March 16, 2017, the North Carolina Supreme Court granted discretionary review of the Court of Appeals decision and the appeal remains pending in the Supreme Court.

Section 2

CURRENT LAW: Pursuant to North Carolina Rule of Evidence (NCRE) 702(a), in order to qualify as an expert witness for the purpose of giving expert opinion on a matter during a trial, all of the following must apply:

- The testimony must be based upon sufficient facts of data.
- The testimony is the product of reliable principles and methods.
- The witness has applied the principles and methods reliably to the facts of the case.

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NCRE 702(a1) provides that as long as a witness has been qualified under the above criteria in subsection (a), the witness may give an expert opinion on the issue of impairment relating to the following:

- The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.
- Whether a person was under the influence of one or more impairing substances. A witness who has received training and holds a current certification as a Drug Recognition Expert, issued by the State Department of Health and Human Services is qualified to give testimony in this area.

ANALYSIS: Senate Bill 308 would remove the preliminary requirements that the witness be qualified under the typical foundational requirements for expert witness testimony if the testimony offers an opinion on the issue of impairment based on the results of an HGN test or the person's certification as a Drug Recognition Expert. Testimony based on an HGN test, only when the test was administered in accordance with the person's training.

EFFECTIVE DATE: Section 1 would become effective December 1, 2017 and apply to offenses committed on or after that date. The remainder of the act would be effective when it becomes law.

Augustus D. Willis, Staff Attorney, contributed substantially to this summary.