



# SENATE BILL 308: Amend Various DWI Statutes.

2017-2018 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	April 5, 2017
<b>Introduced by:</b>	Sen. J. Davis	<b>Prepared by:</b>	Augustus D. Willis Committee Counsel
<b>Analysis of:</b>	Second Edition		

**OVERVIEW:** Senate Bill 308 would (i) amend the statute of limitations for misdemeanor crimes, (ii) toll the statute of limitations during the time that a misdemeanor is dismissed with leave, and (iii) amend the Rules of Evidence pertaining to expert testimony 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.

G.S. 15A-932 sets forth the procedure for dismissal with leave by the State. A prosecutor may dismiss with leave when the defendant cannot be readily found to be served with an order for arrest or fails to appear at a criminal proceeding at which his attendance is required and the prosecutor believes he cannot be readily found. In such a circumstance, the prosecutor may dismiss the case with leave, resulting in the removal of the case from the docket of the court, but with all outstanding process retaining its validity. Upon apprehension of the defendant, or in the discretion of the prosecutor when he believes apprehension is imminent, the prosecutor may reinstitute the proceedings by written notice with the clerk.

**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.

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## 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.

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, for opinions on the issue of impairment, remove the preliminary requirements that the witness be qualified under the typical foundational requirements for expert witness testimony established in NCRE 702(a) before providing expert witness testimony relating to the two matters described in NCRE 702(a1).

Senate Bill 308 would amend the phrase allowing for expert witness testimony about the results of a Horizontal Gaze Nystagmus (HGN) test to require that the test must have been administered in accordance with the person's training, as opposed to the current law requiring only that the person testifying must have completed training in HGN.

**EFFECTIVE DATE:** Section 1 would become effective December 1, 2017 and apply to offenses committed on or after that date. Section 2 would be effective when it becomes law.