

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 59

Short Title: Clarify Report Admissibility. (Public)

Sponsors: Representatives Faircloth, Stam, and Glazier (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary II.

February 9, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE ADMISSIBILITY OF REPORTS OF FORENSIC AND
3 CHEMICAL ANALYSIS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 15A-1225.3(b) reads as rewritten:

6 "(b) Remote Testimony Authorized. – In any criminal proceeding, the testimony of an
7 analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and
8 reported by that analyst, shall be permitted by remote testimony if all of the following occur:

- 9 (1) The State has provided a copy of the report to the attorney of record for the
10 defendant, or to the defendant if that person has no attorney, as required by
11 G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full
12 laboratory report package provided to the district attorney.
13 (2) The State notifies the attorney of record for the defendant, or the defendant if
14 that person has no attorney, at least 15 business days before the proceeding
15 at which the evidence would be used of its intention to introduce the
16 testimony regarding the results of forensic testing into evidence using remote
17 testimony.
18 (3) The defendant's attorney of record, or the defendant if that person has no
19 attorney, fails to file a written objection with the court, with a copy to the
20 State, at least five business days before the proceeding at which the
21 testimony will be presented that the defendant objects to the introduction of
22 the remote testimony.

23 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to
24 file a written objection as provided in this subsection, then the objection shall be deemed
25 waived and the analyst shall be allowed to testify by remote testimony."

26 **SECTION 2.** G.S. 20-139.1 reads as rewritten:

27 "**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**
28 **provisions; controlled-drinking programs.**

29 ...

30 (c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the
31 North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department
32 Laboratory, or any other laboratory approved for chemical analysis by the Department of
33 Health and Human Services (DHHS), are admissible as evidence in all administrative hearings,
34 and in any court, without further authentication and without the testimony of the analyst. For
35 the purposes of this section, a "laboratory approved for chemical analysis" by the DHHS



1 includes, but is not limited to, any hospital laboratory approved by DHHS pursuant to the
2 program resulting from the federal Clinical Laboratory Improvement Amendments of 1988
3 (CLIA).

4 The results shall be certified by the person who performed the analysis. The provisions of
5 this subsection may be utilized in any administrative hearing, but can only be utilized in cases
6 tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court,
7 if:

- 8 (1) The State notifies the defendant at least 15 business days before the
9 proceeding at which the evidence would be used of its intention to introduce
10 the report into evidence under this subsection and provides a copy of the
11 report to the defendant, and
- 12 (2) The defendant fails to file a written objection with the court, with a copy to
13 the State, at least five business days before the proceeding at which the
14 report would be used that the defendant objects to the introduction of the
15 report into evidence.

16 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
17 a written objection as provided in this subsection, then the objection shall be deemed waived
18 and the report shall be admitted into evidence without the testimony of the analyst. Upon filing
19 a timely objection, the admissibility of the report shall be determined and governed by the
20 appropriate rules of evidence.

21 The report containing the results of any blood or urine test may be transmitted
22 electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall
23 be admissible in any court or administrative hearing without further authentication. A copy of
24 the report shall be sent to the charging officer, the clerk of superior court in the county in which
25 the criminal charges are pending, the Division of Motor Vehicles, and the Department of
26 Health and Human Services.

27 Nothing in this subsection precludes the right of any party to call any witness or to
28 introduce any evidence supporting or contradicting the evidence contained in the report.

29 ...
30 (c3) Procedure for Establishing Chain of Custody Without Calling Unnecessary
31 Witnesses. –

- 32 (1) For the purpose of establishing the chain of physical custody or control of
33 blood or urine tested or analyzed to determine whether it contains alcohol, a
34 controlled substance or its metabolite, or any impairing substance, a
35 statement signed by each successive person in the chain of custody that the
36 person delivered it to the other person indicated on or about the date stated is
37 prima facie evidence that the person had custody and made the delivery as
38 stated, without the necessity of a personal appearance in court by the person
39 signing the statement.
- 40 (2) The statement shall contain a sufficient description of the material or its
41 container so as to distinguish it as the particular item in question and shall
42 state that the material was delivered in essentially the same condition as
43 received. The statement may be placed on the same document as the report
44 provided for in subsection (c1) of this section.
- 45 (3) The provisions of this subsection may be utilized in any administrative
46 hearing, but can only be utilized in cases tried in the district and superior
47 court divisions, or in an adjudicatory hearing in juvenile court, if:
 - 48 a. The State notifies the defendant at least 15 business days before the
49 proceeding at which the statement would be used of its intention to
50 introduce the statement into evidence under this subsection and
51 provides a copy of the statement to the defendant, and

b. The defendant fails to file a written notification with the court, with a copy to the State, at least five business days before the proceeding at which the statement would be used that the defendant objects to the introduction of the statement into evidence.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the statement shall be admitted into evidence without the necessity of a personal appearance by the person signing the statement. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

...
 (c5) The testimony of an analyst regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection (c1) of this section, and reported by that analyst, shall be permitted by remote testimony, as defined in G.S. 15A-1225.3, in all administrative hearings, and in any court, if all of the following occur:

(1) The State has provided a copy of the report to the attorney of record for the defendant, or to the defendant if that person has no attorney, as required by subsections (c1) and (c3) of this section.

(2) The State notifies the attorney of record for the defendant, or the defendant if that person has no attorney, at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the chemical analysis into evidence using remote testimony.

(3) The defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding at which the testimony will be presented that the defendant objects to the introduction of the remote testimony.

If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection as provided in this subsection, then the objection shall be deemed waived and the analyst shall be allowed to testify by remote testimony.

The method used for remote testimony authorized by this subsection shall allow the trier of fact and all parties to observe the demeanor of the analyst as the analyst testifies in a similar manner as if the analyst were testifying in the location where the hearing or trial is being conducted. The court shall ensure that the defendant's attorney, or the defendant if that person has no attorney, has a full and fair opportunity for examination and cross-examination of the analyst.

Nothing in this section shall preclude the right of any party to call any witness. Nothing in this subsection shall obligate the Administrative Office of the Courts or the State Crime Laboratory to incur expenses related to remote testimony absent an appropriation of funds for that purpose.

...."

SECTION 3. G.S. 90-95 reads as rewritten:

"§ 90-95. **Violations; penalties.**

...
 (g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory,

1 Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or
2 contains a controlled substance, the report of that analysis certified to upon a form approved by
3 the Attorney General by the person performing the analysis shall be admissible without further
4 authentication and without the testimony of the analyst in all proceedings in the district court
5 and superior court divisions of the General Court of Justice as evidence of the identity, nature,
6 and quantity of the matter analyzed. Provided, however, the provisions of this subsection may
7 be utilized by the State only if:

- 8 (1) The State notifies the defendant at least 15 business days before the
9 proceeding at which the report would be used of its intention to introduce the
10 report into evidence under this subsection and provides a copy of the report
11 to the defendant, and
- 12 (2) The defendant fails to file a written objection with the court, with a copy to
13 the State, at least five business days before the proceeding that the defendant
14 objects to the introduction of the report into evidence.

15 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
16 a written objection as provided in this subsection, then the objection shall be deemed waived
17 and the report shall be admitted into evidence without the testimony of the analyst. Upon filing
18 a timely objection, the admissibility of the report shall be determined and governed by the
19 appropriate rules of evidence.

20 Nothing in this subsection precludes the right of any party to call any witness or to
21 introduce any evidence supporting or contradicting the evidence contained in the report.

22 (g1) Procedure for establishing chain of custody without calling unnecessary witnesses. –

- 23 (1) For the purpose of establishing the chain of physical custody or control of
24 evidence consisting of or containing a substance tested or analyzed to
25 determine whether it is a controlled substance, a statement signed by each
26 successive person in the chain of custody that the person delivered it to the
27 other person indicated on or about the date stated is prima facie evidence
28 that the person had custody and made the delivery as stated, without the
29 necessity of a personal appearance in court by the person signing the
30 statement.
- 31 (2) The statement shall contain a sufficient description of the material or its
32 container so as to distinguish it as the particular item in question and shall
33 state that the material was delivered in essentially the same condition as
34 received. The statement may be placed on the same document as the report
35 provided for in subsection (g) of this section.
- 36 (3) The provisions of this subsection may be utilized by the State only if:
 - 37 a. The State notifies the defendant at least 15 days before trial of its
38 intention to introduce the statement into evidence under this
39 subsection and provides the defendant with a copy of the statement,
40 and
 - 41 b. The defendant fails to notify the State at least five days before trial
42 that the defendant objects to the introduction of the statement into
43 evidence.

44 If the defendant's attorney of record, or the defendant if that person has no
45 attorney, fails to file a written objection as provided in this subsection, then
46 the objection shall be deemed waived and the statement shall be admitted
47 into evidence without the necessity of a personal appearance by the person
48 signing the statement. Upon filing a timely objection, the admissibility of the
49 report shall be determined and governed by the appropriate rules of
50 evidence.

1 (4) Nothing in this subsection precludes the right of any party to call any
2 witness or to introduce any evidence supporting or contradicting the
3 evidence contained in the statement.

4 "

5 **SECTION 4.** This act is effective when it becomes law and applies to notices of
6 intent to introduce a statement or report provided by the State on or after that date.