

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**HOUSE BILL 59
RATIFIED BILL**

AN ACT TO CLARIFY THE ADMISSIBILITY OF REPORTS OF FORENSIC AND
CHEMICAL ANALYSIS AND TO EXEMPT CERTAIN EX PARTE HEARINGS FROM
REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-58.20 reads as rewritten:

"§ 8-58.20. Forensic analysis admissible as evidence.

...
(f) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file a written objection with the court to the use of the laboratory report and affidavit within the time allowed by this section, then the objection shall be deemed waived and the laboratory report and affidavit shall be admitted in evidence in any proceeding without the testimony of the analyst subject to the presiding judge ruling otherwise at the proceeding when offered. If, however, a written objection is filed, this section does not apply and the admissibility of the evidence shall be determined and governed by the appropriate rules of evidence.

(g) Procedure for Establishing Chain of Custody of Evidence Subject to Forensic Analysis Without Calling Unnecessary Witnesses. –

- (1) For the purpose of establishing the chain of physical custody or control of evidence that has been subjected to forensic analysis performed as provided in subsection (b) of this section, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.
- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (a) of this section.
- (3) The provisions of this subsection may be utilized by the State only if (i) the State notifies the defendant at least 15 business days before any proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement and (ii) 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 that the defendant objects to the introduction of the statement into evidence.
- (4) In lieu of the notice required in subdivision (3) of this subsection, the State may include the statement with the laboratory report and affidavit, as provided in subsection (d) of this section.
- (5) If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file the 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.



- (6) Upon filing a timely objection, the admissibility of the statement shall be determined and governed by the appropriate rules of evidence.

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.

...."

SECTION 2. G.S. 15A-1225.3(b) reads as rewritten:

"(b) Remote Testimony Authorized. – In any criminal proceeding, the testimony of an analyst regarding the results of forensic testing admissible pursuant to G.S. 8-58.20, and reported by that analyst, shall be permitted by remote testimony 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 G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full laboratory report package provided to the district attorney.
- (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 results of forensic testing 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."

SECTION 3. G.S. 20-139.1 reads as rewritten:

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

...
(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services (DHHS), are admissible as evidence in all administrative hearings, and in any court, without further authentication and without the testimony of the analyst. For the purposes of this section, a "laboratory approved for chemical analysis" by the DHHS includes, but is not limited to, any hospital laboratory approved by DHHS pursuant to the program resulting from the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA).

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

- (1) The State notifies the defendant at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant 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 report would be used that the defendant objects to the introduction of the report 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 report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

The report containing the results of any blood or urine test may be transmitted electronically or via facsimile. A copy of the affidavit sent electronically or via facsimile shall be admissible in any court or administrative hearing without further authentication. A copy of

the report shall be sent to the charging officer, the clerk of superior court in the county in which the criminal charges are pending, the Division of Motor Vehicles, and the Department of Health and Human Services.

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 report.

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

- (1) For the purpose of establishing the chain of physical custody or control of blood or urine tested or analyzed to determine whether it contains alcohol, a controlled substance or its metabolite, or any impairing substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.
- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (c1) of this section.
- (3) The provisions of this subsection may be utilized in any administrative hearing, but can only be utilized in cases tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:
 - a. The State notifies the defendant at least 15 business days before the proceeding at which the statement would be used of its intention to introduce the statement into evidence under this subsection and 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 4. 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, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication and without the testimony of the analyst in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this subsection may be utilized by the State only if:

- (1) The State notifies the defendant at least 15 business days before the proceeding at which the report would be used of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant fails to file a written objection with the court, with a copy to the State, at least five business days before the proceeding that the defendant objects to the introduction of the report 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 report shall be admitted into evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility of the report shall be determined and governed by the appropriate rules of evidence.

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 report.

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

- (1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.
- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.
- (3) The provisions of this subsection may be utilized by the State only if:
 - a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this

subsection and provides the defendant with a copy of the statement, and

- b. The defendant fails to notify the State at least five days before trial 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.

...."

SECTION 5. G.S. 7A-198(e) reads as rewritten:

"(e) Reporting will not be provided in ex parte or emergency hearings before a judge pursuant to Chapter 50B or 50C of the General Statutes, trials before magistrates-magistrates, or in hearings to adjudicate and dispose of infractions in the district court."

SECTION 6. This act is effective when it becomes law. Sections 1 through 4 of this act apply to notices of intent to introduce a statement or report provided by the State on or after that date. Section 5 of this act applies to ex parte hearings conducted on or after that date.

In the General Assembly read three times and ratified this the 29th day of July, 2015.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Paul Stam
Speaker Pro Tempore of the House of Representatives

Pat McCrory
Governor

Approved _____m. this _____ day of _____, 2015