

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 252*
State and Local Government Committee Substitute Adopted 5/5/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S252-PCS35376-RK-92

Short Title: Comply with Melendez-Diaz Decision.

(Public)

Sponsors:

Referred to:

February 23, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND STATE LAW REGARDING THE INTRODUCTION OF LAB
3 REPORTS AND RELATED DOCUMENTS TO COMPLY WITH REQUIREMENTS OF
4 THE UNITED STATES SUPREME COURT DECISION IN MELENDEZ-DIAZ V.
5 MASSACHUSETTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 8-58.20(d) reads as rewritten:

8 "(d) The district attorney shall serve a copy of the laboratory report and affidavit and
9 indicate whether the report and affidavit will be offered as evidence at any proceeding against
10 the defendant on the attorney of record for the defendant, or on the defendant if that person has
11 no attorney, no later than five business days after receiving the report and affidavit, or 30
12 business days before any proceeding in which the report may be used against the defendant,
13 whichever occurs first."

14 **SECTION 2.** G.S. 8-58.20 is amending by adding a new subsection to read:

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

17 (1) For the purpose of establishing the chain of physical custody or control of
18 evidence that has been subjected to forensic analysis performed as provided
19 in subsection (b) of this section, a statement signed by each successive
20 person in the chain of custody that the person delivered it to the other person
21 indicated on or about the date stated is prima facie evidence that the person
22 had custody and made the delivery as stated, without the necessity of a
23 personal appearance in court by the person signing the statement.

24 (2) The statement shall contain a sufficient description of the material or its
25 container so as to distinguish it as the particular item in question and shall
26 state that the material was delivered in essentially the same condition as
27 received. The statement may be placed on the same document as the report
28 provided for in subsection (a) of this section.

29 (3) The provisions of this subsection may be utilized by the State only if (i) the
30 State notifies the defendant at least 15 business days before any proceeding
31 at which the statement would be used of its intention to introduce the
32 statement into evidence under this subsection and provides the defendant
33 with a copy of the statement and (ii) the defendant fails to file a written



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1 notification with the court, with a copy to the State, at least five business
2 days before the proceeding that the defendant objects to the introduction of
3 the statement into evidence.

4 (4) In lieu of the notice required in subdivision (3) of this subsection, the State
5 may include the statement with the laboratory report and affidavit, as
6 provided in subsection (d) of this section.

7 (5) If the defendant's attorney of record, or the defendant if that person has no
8 attorney, fails to file the written objection as provided in this subsection,
9 then the statement may be admitted into evidence without the necessity of a
10 personal appearance by the person signing the statement.

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

13 Nothing in this subsection precludes the right of any party to call any witness or to
14 introduce any evidence supporting or contradicting the evidence contained in the statement."

15 **SECTION 3.** G.S. 20-139.1(c1) reads as rewritten:

16 "(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the
17 North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police
18 Department Laboratory, or any other laboratory approved for chemical analysis by the
19 Department of Health and Human Services, are admissible as evidence in all administrative
20 hearings, and in any court, without further ~~authentication.~~ authentication and without the
21 testimony of the analyst. The results shall be certified by the person who performed the
22 analysis. ~~However, The provisions of this subsection may be utilized in any administrative~~
23 hearing, but can only be utilized in cases tried in the district and superior court divisions, or in
24 an adjudicatory hearing in juvenile court, if:if the defendant notifies the State, at least five days
25 before trial in the superior court division or an adjudicatory hearing in juvenile court that the
26 defendant objects to the introduction of the report into evidence,

27 (1) The State notifies the defendant at least 15 business days before the
28 proceeding at which the evidence would be used of its intention to introduce
29 the report into evidence under this subsection and provides a copy of the
30 report to the defendant, and

31 (2) The defendant fails to file a written objection with the court, with a copy to
32 the State, at least five business days before the proceeding at which the
33 report would be used that the defendant objects to the introduction of the
34 report into evidence.

35 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
36 a written objection as provided in this subsection, then the report may be admitted into
37 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
38 of the report shall be determined and governed by the appropriate rules of evidence.

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

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

47 **SECTION 4.** G.S. 20-139.1(c3) reads as rewritten:

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

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- 1 (1) For the purpose of establishing the chain of physical custody or control of
2 blood or urine tested or analyzed to determine whether it contains alcohol, a
3 controlled substance or its metabolite, or any impairing substance, a
4 statement signed by each successive person in the chain of custody that the
5 person delivered it to the other person indicated on or about the date stated is
6 prima facie evidence that the person had custody and made the delivery as
7 stated, without the necessity of a personal appearance in court by the person
8 signing the statement.
- 9 (2) The statement shall contain a sufficient description of the material or its
10 container so as to distinguish it as the particular item in question and shall
11 state that the material was delivered in essentially the same condition as
12 received. The statement may be placed on the same document as the report
13 provided for in subsection (c1) of this section.
- 14 (3) The provisions of this subsection may be utilized in any administrative
15 ~~hearing and by the State in district court, hearing,~~ but can only be utilized in
16 cases tried in the district and superior court divisions, or in an adjudicatory
17 hearing in juvenile court, if a case originally tried in superior court or an
18 adjudicatory hearing in juvenile court if the defendant fails to notify the
19 State at least five days before trial that the defendant objects to the
20 introduction of the statement into evidence.
- 21 a. The State notifies the defendant at least 15 business days before the
22 proceeding at which the statement would be used of its intention to
23 introduce the statement into evidence under this subsection and
24 provides a copy of the statement to the defendant, and
- 25 b. The defendant fails to file a written notification with the court, with a
26 copy to the State, at least five business days before the proceeding at
27 which the statement would be used that the defendant objects to the
28 introduction of the statement into evidence.
- 29 If the defendant's attorney of record, or the defendant if that person has no
30 attorney, fails to file a written objection as provided in this subsection, then
31 the statement may be admitted into evidence without the necessity of a
32 personal appearance by the person signing the statement. Upon filing a
33 timely objection, the admissibility of the report shall be determined and
34 governed by the appropriate rules of evidence.
- 35 (4) Nothing in this subsection precludes the right of any party to call any
36 witness or to introduce any evidence supporting or contradicting the
37 evidence contained in the statement."

38 **SECTION 5.** G.S. 20-139.1(e1) reads as rewritten:

39 "(e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a chemical
40 analyst sworn to and properly executed before an official authorized to administer oaths is
41 admissible in evidence without further authentication and without the testimony of the analyst
42 in any hearing or trial in the District Court Division of the General Court of Justice with respect
43 to the following matters:

- 44 (1) The alcohol concentration or concentrations or the presence or absence of an
45 impairing substance of a person given a chemical analysis and who is
46 involved in the hearing or trial.
- 47 (2) The time of the collection of the blood, breath, or other bodily fluid or
48 substance sample or samples for the chemical analysis.
- 49 (3) The type of chemical analysis administered and the procedures followed.

- 1 (4) The type and status of any permit issued by the Department of Health and
2 Human Services that the analyst held on the date the analyst performed the
3 chemical analysis in question.
- 4 (5) If the chemical analysis is performed on a breath-testing instrument for
5 which regulations adopted pursuant to subsection (b) require preventive
6 maintenance, the date the most recent preventive maintenance procedures
7 were performed on the breath-testing instrument used, as shown on the
8 maintenance records for that instrument.

9 The Department of Health and Human Services shall develop a form for use by chemical
10 analysts in making this affidavit. ~~If any person who submitted to a chemical desires that a
11 chemical analyst personally testify in the hearing or trial in the District Court Division, the
12 person may subpoena the chemical analyst and examine him as if he were an adverse witness.
13 A subpoena for a chemical analyst shall not be issued unless the person files in writing with the
14 court and serves a copy on the district attorney at least five days prior to trial an affidavit
15 specifying the factual grounds on which the person believes the chemical analysis was not
16 properly administered and the facts that the chemical analyst will testify about and stating that
17 the presence of the analyst is necessary for the proper defense of the case. The district court
18 shall determine if there are grounds to believe that the presence of the analyst requested is
19 necessary for the proper defense. If so, the case shall be continued until the analyst can be
20 present. The criminal case shall not be dismissed due to the failure of the analyst to appear,
21 unless the analyst willfully fails to appear after being ordered to appear by the court."~~

22 **SECTION 6.** G.S. 20-139.1 is amended by adding a new subsection to read:

23 "(e2) Except as governed by subsection (c1), (c2), or (c3) of this section, the State can
24 only use the provisions of subsection (e1) of this section if:

- 25 (1) The State notifies the defendant at least 15 business days before the
26 proceeding at which the affidavit would be used of its intention to introduce
27 the affidavit into evidence under this subsection and provides a copy of the
28 affidavit to the defendant, and
- 29 (2) The defendant fails to file a written notification with the court, with a copy
30 to the State, at least five business days before the proceeding at which the
31 affidavit would be used that the defendant objects to the introduction of the
32 affidavit into evidence.

33 The failure to file a timely objection as provided in this subsection shall be deemed a
34 waiver of the right to object to the admissibility of the affidavit. Upon filing a timely objection,
35 the admissibility of the report shall be determined and governed by the appropriate rules of
36 evidence. The case shall be continued until the analyst can be present. The criminal case shall
37 not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to
38 appear after being ordered to appear by the court. Nothing in subsection (e1) or subsection (e2)
39 of this section precludes the right of any party to call any witness or to introduce any evidence
40 supporting or contradicting the evidence contained in the affidavit."

41 **SECTION 7.** G.S. 90-95(g) reads as rewritten:

42 "(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation
43 Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology
44 Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the
45 matter is or contains a controlled substance, the report of that analysis certified to upon a form
46 approved by the Attorney General by the person performing the analysis shall be admissible
47 without further authentication and without the testimony of the analyst in all proceedings in the
48 district court and superior court divisions of the General Court of Justice as evidence of the
49 identity, nature, and quantity of the matter analyzed. Provided, however, the provisions of this
50 subsection may be utilized by the State only if: that a report is admissible in a criminal

1 ~~proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the~~
2 ~~district court division only if:~~

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

11 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
12 a written objection as provided in this subsection, then the report may be admitted into
13 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
14 of the report shall be determined and governed by the appropriate rules of evidence.

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

17 **SECTION 8.** This act becomes effective October 1, 2009, and applies to offenses
18 committed on or after that date. Nothing in this act shall be construed to abrogate any judicial
19 or administrative rulings or decisions prior to the effective date of this act that (i) allowed or
20 disallowed the introduction of evidence or (ii) validated or invalidated procedures used for the
21 introduction of evidence.