

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 690  
Committee Substitute Favorable 5/18/11  
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PROPOSED SENATE COMMITTEE SUBSTITUTE H690-PCS70306-SA-81

Short Title: Amend Evidence & DNA Expunction Laws.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAWS REGARDING DISPOSITION OF BLOOD EVIDENCE,  
3 ADMISSIBILITY OF REPORTS AFTER NOTICE AND DEMAND, AND  
4 EXPUNCTION OF DNA SAMPLES TAKEN UPON ARREST, AND TO CHANGE THE  
5 METHOD FOR DETERMINING THE SENIOR RESIDENT SUPERIOR COURT  
6 JUDGE FOR A DISTRICT.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 20-139.1 is amended by adding a new section to read:

9 "(h) Disposition of Blood Evidence. – Notwithstanding any other provision of law, any  
10 blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled  
11 substance or its metabolite, or any impairing substance pursuant to this section may be  
12 destroyed by the analyzing agency 12 months after the issuance date of the report of all  
13 examinations conducted, without further notice to the parties. However, if a Motion to Preserve  
14 the evidence has been filed by either party, the evidence shall remain in the custody of the  
15 analyzing agency or the agency that collected the sample until dispositive order of a court of  
16 competent jurisdiction is entered."

17 **SECTION 2.** G.S. 8-58.20(f) reads as rewritten:

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

25 **SECTION 3.** G.S. 8-58.20(g)(5) reads as rewritten:

26 "(5) If the defendant's attorney of record, or the defendant if that person has no  
27 attorney, fails to file the written objection as provided in this subsection,  
28 then the statement ~~may~~shall be admitted into evidence without the necessity  
29 of a personal appearance by the person signing the statement."

30 **SECTION 4.** G.S. 20-139.1(c1) reads as rewritten:

31 "(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the  
32 North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department



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1 Laboratory, or any other laboratory approved for chemical analysis by the Department of  
2 Health and Human Services, are admissible as evidence in all administrative hearings, and in  
3 any court, without further authentication and without the testimony of the analyst. The results  
4 shall be certified by the person who performed the analysis. The provisions of this subsection  
5 may be utilized in any administrative hearing, but can only be utilized in cases tried in the  
6 district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:

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

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

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

27 **SECTION 5.** G.S. 20-139.1(c3) reads as rewritten:

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

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

1 which the statement would be used that the defendant objects to the  
2 introduction of the statement into evidence.

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

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

12 **SECTION 6.** G.S. 20-139.1(e1) reads as rewritten:

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

- 18 (1) The alcohol concentration or concentrations or the presence or absence of an  
19 impairing substance of a person given a chemical analysis and who is  
20 involved in the hearing or trial.  
21 (2) The time of the collection of the blood, breath, or other bodily fluid or  
22 substance sample or samples for the chemical analysis.  
23 (3) The type of chemical analysis administered and the procedures followed.  
24 (4) The type and status of any permit issued by the Department of Health and  
25 Human Services that the analyst held on the date the analyst performed the  
26 chemical analysis in question.  
27 (5) If the chemical analysis is performed on a breath-testing instrument for  
28 which regulations adopted pursuant to subsection (b) require preventive  
29 maintenance, the date the most recent preventive maintenance procedures  
30 were performed on the breath-testing instrument used, as shown on the  
31 maintenance records for that instrument.

32 The Department of Health and Human Services shall develop a form for use by chemical  
33 analysts in making this affidavit."

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

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

- 44 (1) The State notifies the defendant at least 15 business days before the  
45 proceeding at which the report would be used of its intention to introduce the  
46 report into evidence under this subsection and provides a copy of the report  
47 to the defendant, and  
48 (2) The defendant fails to file a written objection with the court, with a copy to  
49 the State, at least five business days before the proceeding that the defendant  
50 objects to the introduction of the report into evidence.

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

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

7 **SECTION 8.** G.S. 90-95(g1) reads as rewritten:

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

9 (1) For the purpose of establishing the chain of physical custody or control of  
10 evidence consisting of or containing a substance tested or analyzed to  
11 determine whether it is a controlled substance, a statement signed by each  
12 successive person in the chain of custody that the person delivered it to the  
13 other person indicated on or about the date stated is prima facie evidence  
14 that the person had custody and made the delivery as stated, without the  
15 necessity of a personal appearance in court by the person signing the  
16 statement.

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

22 (3) The provisions of this subsection may be utilized by the State only if:

23 a. The State notifies the defendant at least 15 days before trial of its  
24 intention to introduce the statement into evidence under this  
25 subsection and provides the defendant with a copy of the statement,  
26 and

27 b. The defendant fails to notify the State at least five days before trial  
28 that the defendant objects to the introduction of the statement into  
29 evidence.

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

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

39 **SECTION 9.** G.S. 15A-266.3A reads as rewritten:

40 **"§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

41 ...

42 (i) ~~Prior to June 1, 2012, upon~~Upon the occurrence of one of the events in  
43 ~~sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section,~~ the defendant or the  
44 defendant's counsel shall provide the prosecuting district attorney with a signed request form,  
45 promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA  
46 record be expunged from the DNA Database and that any biological samples in the DNA  
47 Databank be destroyed. ~~On or after June 1, 2012, upon the occurrence of one of the events in~~  
48 ~~sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, no request form~~  
49 ~~shall be required and the prosecuting district attorney shall initiate the procedure provided in~~  
50 ~~subsection (j) of this section.~~

1 (j) ~~Prior to June 1, 2012, within~~ Within 30 days of the receipt of the form required by  
2 subsection (i) of this section ~~or the occurrence of one of the events in sub-subdivision a., b., or~~  
3 ~~e. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30~~  
4 ~~days of the occurrence of one of the events in subdivision (1) of subsection (h) of this section,~~  
5 the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this  
6 section, and if so, shall:

- 7 (1) Verify and indicate the facts of the qualifying event on a verification form  
8 promulgated by the Administrative Office of the Courts.
  - 9 (2) Include the last known address of the defendant, as reflected in the court  
10 files, on the verification form.
  - 11 (3) Sign the verification form or, if the defendant was acquitted or the charges  
12 were dismissed by the court, obtain the signature of a judge.
  - 13 (4) Transmit the verification form to the SBI.
- 14 (k) Within ~~30~~ 90 days of receipt of the verification form, the SBI shall:
- 15 (1) Determine whether the requirement of subdivision (2) of subsection (h) of  
16 this section has been met.
  - 17 (2) If the requirement has been met, remove the defendant's DNA record and  
18 samples as required by subsection (h) of this section.
  - 19 (3) Mail to the defendant, at the address specified in the verification form, a  
20 notice either:
    - 21 a. Documenting expunction of the DNA record and destruction of the  
22 DNA sample, or
    - 23 b. Notifying the defendant that the DNA record and sample do not  
24 qualify for expunction pursuant to subsection (h) of this section.

25 ...."

26 **SECTION 10.** This act becomes effective December 1, 2012. Sections 2, 3, 4, 5,  
27 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2012.