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SENATE DRS85188-ML-138C (03/15)

Short Title: Evidence & DNA Expunction Laws.-AB

(Public)

Sponsors: Senator Newton (Primary Sponsor).

Referred to:

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.

5 The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

29 "(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the  
30 North Carolina State Crime Laboratory, the Charlotte, North Carolina, Police Department  
31 Laboratory, or any other laboratory approved for chemical analysis by the Department of  
32 Health and Human Services, are admissible as evidence in all administrative hearings, and in  
33 any court, without further authentication and without the testimony of the analyst. The results  
34 shall be certified by the person who performed the analysis. The provisions of this subsection  
35 may be utilized in any administrative hearing, but can only be utilized in cases tried in the  
36 district and superior court divisions, or in an adjudicatory hearing in juvenile court, if:



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

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

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

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

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

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

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

48 If the defendant's attorney of record, or the defendant if that person has no  
49 attorney, fails to file a written objection as provided in this subsection, then  
50 the statement ~~may~~shall be admitted into evidence without the necessity of a  
51 personal appearance by the person signing the statement. Upon filing a

1                   timely objection, the admissibility of the report shall be determined and  
2                   governed by the appropriate rules of evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 16 a. The State notifies the defendant at least 15 days before trial of its  
17 intention to introduce the statement into evidence under this  
18 subsection and provides the defendant with a copy of the statement,  
19 and  
20 b. The defendant fails to notify the State at least five days before trial  
21 that the defendant objects to the introduction of the statement into  
22 evidence.

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

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

32 **SECTION 9.** G.S. 15A-266.3A(k) reads as rewritten:

33 "(k) Within ~~30~~90 days of receipt of the verification form, the SBI shall:

34 (1) Determine whether the requirement of subdivision (2) of subsection (h) of  
35 this section has been met.

36 (2) If the requirement has been met, remove the defendant's DNA record and  
37 samples as required by subsection (h) of this section.

38 (3) Mail to the defendant, at the address specified in the verification form, a  
39 notice ~~either:~~ doing either of the following:

40 a. Documenting expunction of the DNA record and destruction of the  
41 DNA ~~sample,~~ or sample.

42 b. Notifying the defendant that the DNA record and sample do not  
43 qualify for expunction pursuant to subsection (h) of this section."

44 **SECTION 10.** This act becomes effective December 1, 2013. Sections 2, 3, 4, 5, 6,  
45 7, and 8 of this act apply to proceedings that occur on or after December 1, 2013.