

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

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**HOUSE BILL 59
PROPOSED COMMITTEE SUBSTITUTE H59-PCS20050-SA-4**

Short Title: Clarify Report Admissibility.

(Public)

Sponsors:

Referred to:

February 9, 2015

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

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



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1 days before the proceeding that the defendant objects to the introduction of
2 the statement into evidence.

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

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

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

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

20 (1) The State has provided a copy of the report to the attorney of record for the
21 defendant, or to the defendant if that person has no attorney, as required by
22 G.S. 8-58.20(d). For purposes of this subdivision, "report" means the full
23 laboratory report package provided to the district attorney.

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

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

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

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

38 "**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**
39 **provisions; controlled-drinking programs.**

40 ...

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

50 The results shall be certified by the person who performed the analysis. The provisions of
51 this subsection may be utilized in any administrative hearing, but can only be utilized in cases

1 tried in the district and superior court divisions, or in an adjudicatory hearing in juvenile court,
2 if:

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

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

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

24 ...

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

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

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

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

11 ...

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

- 16 (1) The State has provided a copy of the report to the attorney of record for the
17 defendant, or to the defendant if that person has no attorney, as required by
18 subsections (c1) and (c3) of this section.
- 19 (2) The State notifies the attorney of record for the defendant, or the defendant if
20 that person has no attorney, at least 15 business days before the proceeding
21 at which the evidence would be used of its intention to introduce the
22 testimony regarding the chemical analysis into evidence using remote
23 testimony.
- 24 (3) The defendant's attorney of record, or the defendant if that person has no
25 attorney, fails to file a written objection with the court, with a copy to the
26 State, at least five business days before the proceeding at which the
27 testimony will be presented that the defendant objects to the introduction of
28 the remote testimony.

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

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

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

42"

43 **SECTION 4.** G.S. 90-95 reads as rewritten:

44 "**§ 90-95. Violations; penalties.**

45 ...

46 (g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the
47 Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory,
48 Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or
49 contains a controlled substance, the report of that analysis certified to upon a form approved by
50 the Attorney General by the person performing the analysis shall be admissible without further
51 authentication and without the testimony of the analyst in all proceedings in the district court

1 and superior court divisions of the General Court of Justice as evidence of the identity, nature,
2 and quantity of the matter analyzed. Provided, however, the provisions of this subsection may
3 be utilized by the State only if:

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

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

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

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

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

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

50"

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