

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 357  
Committee Substitute Favorable 4/15/15  
PROPOSED SENATE COMMITTEE SUBSTITUTE H357-PCS40630-TJ-63

Short Title: Chemical Analysis Reports/District Court.

(Public)

Sponsors:

Referred to:

March 26, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND PROCEDURES GOVERNING THE ADMISSIBILITY OF WRITTEN  
3 CHEMICAL ANALYSIS RESULTS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 3 of Chapter 20 of the General Statutes reads as rewritten:  
6 **"§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions;**  
7 **controlled-drinking programs.**

8 (a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a  
9 person's alcohol concentration or the presence of any other impairing substance in the person's  
10 body as shown by a chemical analysis is admissible in evidence. This section does not limit the  
11 introduction of other competent evidence as to a person's alcohol concentration or results of other  
12 tests showing the presence of an impairing substance, including other chemical tests.

13 (b) Approval of Valid Test Methods; Licensing Chemical Analysts. – The results of a  
14 chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration. A  
15 chemical analysis of the breath administered pursuant to the implied-consent law is admissible in  
16 any court or administrative hearing or proceeding if it meets both of the following requirements:

- 17 (1) It is performed in accordance with the rules of the Department of Health and  
18 Human Services.  
19 (2) The person performing the analysis had, at the time of the analysis, a current  
20 permit issued by the Department of Health and Human Services authorizing the  
21 person to perform a test of the breath using the type of instrument employed.

22 For purposes of establishing compliance with subdivision (b)(1) of this section, the court or  
23 administrative agency shall take notice of the rules of the Department of Health and Human  
24 Services. For purposes of establishing compliance with subdivision (b)(2) of this section, the court  
25 or administrative agency shall take judicial notice of the list of permits issued to the person  
26 performing the analysis, the type of instrument on which the person is authorized to perform tests  
27 of the breath, and the date the permit was issued. The Department of Health and Human Services  
28 may ascertain the qualifications and competence of individuals to conduct particular chemical  
29 analyses and the methods for conducting chemical analyses. The Department may issue permits to  
30 conduct chemical analyses to individuals it finds qualified subject to periodic renewal,  
31 termination, and revocation of the permit in the Department's discretion.

32 (b1) When Officer May Perform Chemical Analysis. – Any person possessing a current  
33 permit authorizing the person to perform chemical analysis may perform a chemical analysis.

34 (b2) Breath Analysis Results Preventive Maintenance. – The Department of Health and  
35 Human Services shall perform preventive maintenance on breath-testing instruments used for



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1 chemical analysis. A court or administrative agency shall take judicial notice of the preventive  
2 maintenance records of the Department. Notwithstanding the provisions of subsection (b), the  
3 results of a chemical analysis of a person's breath performed in accordance with this section are  
4 not admissible in evidence if:

- 5 (1) The defendant objects to the introduction into evidence of the results of the  
6 chemical analysis of the defendant's breath; and
- 7 (2) The defendant demonstrates that, with respect to the instrument used to analyze  
8 the defendant's breath, preventive maintenance procedures required by the  
9 regulations of the Department of Health and Human Services had not been  
10 performed within the time limits prescribed by those regulations.

11 (b3) Sequential Breath Tests Required. – The methods governing the administration of  
12 chemical analyses of the breath shall require the testing of at least duplicate sequential breath  
13 samples. The results of the chemical analysis of all breath samples are admissible if the test results  
14 from any two consecutively collected breath samples do not differ from each other by an alcohol  
15 concentration greater than 0.02. Only the lower of the two test results of the consecutively  
16 administered tests can be used to prove a particular alcohol concentration. A person's refusal to  
17 give the sequential breath samples necessary to constitute a valid chemical analysis is a refusal  
18 under G.S. 20-16.2(c).

19 A person's refusal to give the second or subsequent breath sample shall make the result of the  
20 first breath sample, or the result of the sample providing the lowest alcohol concentration if more  
21 than one breath sample is provided, admissible in any judicial or administrative hearing for any  
22 relevant purpose, including the establishment that a person had a particular alcohol concentration  
23 for conviction of an offense involving impaired driving.

24 (b4) Repealed by Session Laws 2006-253, s. 16, effective December 1, 2006, and applicable  
25 to offenses committed on or after that date.

26 (b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2, to  
27 submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to  
28 or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement officer;  
29 except that a person charged with a violation of G.S. 20-141.4 shall be requested, at any relevant  
30 time after the driving, to provide a blood sample in addition to or in lieu of a chemical analysis of  
31 the breath. However, if a breath sample shows an alcohol concentration of .08 or more, then  
32 requesting a blood sample shall be in the discretion of a law enforcement officer. If a subsequent  
33 chemical analysis is requested pursuant to this subsection, the person shall again be advised of the  
34 implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a  
35 chemical analysis of the blood or other bodily fluid or substance is a willful refusal under  
36 G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this subsection, and the  
37 person is charged with a violation of G.S. 20-141.4, then a law enforcement officer with probable  
38 cause to believe that the offense involved impaired driving or was an alcohol-related offense made  
39 subject to the procedures of G.S. 20-16.2 shall seek a warrant to obtain a blood sample. The failure  
40 to obtain a blood sample pursuant to this subsection shall not be grounds for the dismissal of a  
41 charge and is not an appealable issue.

42 (b6) The Department of Health and Human Services shall post on a Web page a list of all  
43 persons who have a permit authorizing them to perform chemical analyses, the types of analyses  
44 that they can perform, the instruments that each person is authorized to operate, the effective dates  
45 of the permits, and the records of preventive maintenance. A court or administrative agency shall  
46 take judicial notice of whether, at the time of the chemical analysis, the chemical analyst  
47 possessed a permit authorizing the chemical analyst to perform the chemical analysis administered  
48 and whether preventive maintenance had been performed on the breath-testing instrument in  
49 accordance with the Department's rules.

50 (c) Blood and Urine for Chemical Analysis. – Notwithstanding any other provision of law,  
51 when a blood or urine test is specified as the type of chemical analysis by a law enforcement

1 officer, a physician, registered nurse, emergency medical technician, or other qualified person  
2 shall withdraw the blood sample and obtain the urine sample, and no further authorization or  
3 approval is required. If the person withdrawing the blood or collecting the urine requests written  
4 confirmation of the law enforcement officer's request for the withdrawal of blood or collecting the  
5 urine, the officer shall furnish it before blood is withdrawn or urine collected. When blood is  
6 withdrawn or urine collected pursuant to a law enforcement officer's request, neither the person  
7 withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or  
8 corporation employing that person, or contracting for the service of withdrawing blood or  
9 collecting urine, may be held criminally or civilly liable by reason of withdrawing the blood or  
10 collecting the urine, except that there is no immunity from liability for negligent acts or omissions.  
11 A person requested to withdraw blood or collect urine pursuant to this subsection may refuse to do  
12 so only if it reasonably appears that the procedure cannot be performed without endangering the  
13 safety of the person collecting the sample or the safety of the person from whom the sample is  
14 being collected. If the officer requesting the blood or urine requests a written justification for the  
15 refusal, the medical provider who determined the sample could not be collected safely shall  
16 provide written justification at the time of the refusal.

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

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

- 28 (1) The State notifies the defendant no later than 15 business days after receiving  
29 the report and at least 15 business days before the proceeding at which the  
30 evidence would be used of its intention to introduce the report into evidence  
31 under this subsection and provides a copy of the report to the defendant, and
- 32 (2) The defendant fails to file a written objection with the court, with a copy to the  
33 State, at least five business days before the proceeding at which the report  
34 would be used that the defendant objects to the introduction of the report into  
35 evidence.

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

41 If the proceeding at which the report would be introduced into evidence under this subsection  
42 is continued, the notice provided by the State, the written objection filed by the defendant, or the  
43 failure of the defendant to file a written objection shall remain effective at any subsequent  
44 calendar of that proceeding.

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

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

1 (c2) Repealed by Session Laws 2013-194, s. 1, effective June 26, 2013.

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

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

11 (2) The statement shall contain a sufficient description of the material or its  
12 container so as to distinguish it as the particular item in question and shall state  
13 that the material was delivered in essentially the same condition as received.  
14 The statement may be placed on the same document as the report provided for  
15 in subsection (c1) or the affidavit provided for in subsection (e1) of this  
16 section-section, as applicable.

17 (3) The provisions of this subsection may be utilized in any administrative hearing,  
18 but can only be utilized in cases tried in the district and superior court divisions,  
19 or in an adjudicatory hearing in juvenile court, if:

20 a. The State notifies the defendant no later than 15 business days after  
21 receiving the statement and 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 provides  
24 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 the  
31 objection shall be deemed waived and the statement shall be admitted into  
32 evidence without the necessity of a personal appearance by the person signing  
33 the statement. Upon filing a timely objection, the admissibility of the ~~report~~  
34 statement shall be determined and governed by the appropriate rules of  
35 evidence.

36 If the proceeding at which the statement would be introduced into evidence  
37 under this subsection is continued, the notice provided by the State, the written  
38 objection filed by the defendant, or the failure of the defendant to file a written  
39 objection shall remain effective at any subsequent calendaring of that  
40 proceeding.

41 (4) Nothing in this subsection precludes the right of any party to call any witness or  
42 to introduce any evidence supporting or contradicting the evidence contained in  
43 the statement.

44 (c4) Repealed by Session Laws 2013-194, s. 1, effective June 26, 2013.

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

49 (1) The State has provided a copy of the report to the attorney of record for the  
50 defendant, or to the defendant if that person has no attorney, as required by  
51 subsections (c1) and (c3) of this section.

1           (2)     The State notifies the attorney of record for the defendant or the defendant if  
2           that person has no attorney, at least 15 business days before the proceeding at  
3           which the evidence would be used of its intention to introduce the testimony  
4           regarding the chemical analysis into evidence using remote testimony.

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

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 objection shall be deemed waived and  
11          the analyst shall be allowed to testify by remote testimony.

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

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

20          (d)     Right to Additional Test. – Nothing in this section shall be construed to prohibit a  
21          person from obtaining or attempting to obtain an additional chemical analysis. If the person is not  
22          released from custody after the initial appearance, the agency having custody of the person shall  
23          make reasonable efforts in a timely manner to assist the person in obtaining access to a telephone  
24          to arrange for any additional test and allow access to the person in accordance with the agreed  
25          procedure in G.S. 20-38.5. The failure or inability of the person who submitted to a chemical  
26          analysis to obtain any additional test or to withdraw blood does not preclude the admission of  
27          evidence relating to the chemical analysis.

28          (d1)    Right to Require Additional Tests. – If a person refuses to submit to any test or tests  
29          pursuant to this section, any law enforcement officer with probable cause may, without a court  
30          order, compel the person to provide blood or urine samples for analysis if the officer reasonably  
31          believes that the delay necessary to obtain a court order, under the circumstances, would result in  
32          the dissipation of the percentage of alcohol in the person's blood or urine.

33          (d2)    Notwithstanding any other provision of law, when a blood or urine sample is requested  
34          under subsection (d1) of this section by a law enforcement officer, a physician, registered nurse,  
35          emergency medical technician, or other qualified person shall withdraw the blood and obtain the  
36          urine sample, and no further authorization or approval is required. If the person withdrawing the  
37          blood or collecting the urine requests written confirmation of the charging officer's request for the  
38          withdrawal of blood or obtaining urine, the officer shall furnish it before blood is withdrawn or  
39          urine obtained. A person requested to withdraw blood or collect urine pursuant to this subsection  
40          may refuse to do so only if it reasonably appears that the procedure cannot be performed without  
41          endangering the safety of the person collecting the sample or the safety of the person from whom  
42          the sample is being collected. If the officer requesting the blood or urine requests a written  
43          justification for the refusal, the medical provider who determined the sample could not be  
44          collected safely shall provide written justification at the time of the refusal.

45          (d3)    When blood is withdrawn or urine collected pursuant to a law enforcement officer's  
46          request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution,  
47          person, firm, or corporation employing that person, or contracting for the service of withdrawing  
48          blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that  
49          there is no immunity from liability for negligent acts or omissions. The results of the analysis of  
50          blood or urine under this subsection shall be admissible if performed by the State Crime  
51          Laboratory or any other hospital or qualified laboratory.

1 (e) Recording Results of Chemical Analysis of Breath. – A person charged with an  
2 implied-consent offense who has not received, prior to a trial, a copy of the chemical analysis  
3 results the State intends to offer into evidence may request in writing a copy of the results. The  
4 failure to provide a copy prior to any trial shall be grounds for a continuance of the case but shall  
5 not be grounds to suppress the results of the chemical analysis or to dismiss the criminal charges.

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

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

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

27 (e2) Except as governed by subsection ~~(e1)~~, ~~(e2)~~, (c1) or (c3) of this section, the State can  
28 only use the provisions of subsection (e1) of this section if:

- 29 (1) The State notifies the defendant no later than 15 business days after receiving  
30 the affidavit and at least 15 business days before the proceeding at which the  
31 affidavit would be used of its intention to introduce the affidavit into evidence  
32 under this subsection and provides a copy of the affidavit to the defendant, and
- 33 (2) The defendant fails to file a written notification with the court, with a copy to  
34 the State, at least five business days before the proceeding at which the affidavit  
35 would be used that the defendant objects to the introduction of the affidavit into  
36 evidence.

37 The failure to file a timely objection as provided in this subsection shall be deemed a waiver of  
38 the right to object to the admissibility of the ~~affidavit~~, affidavit, and the affidavit shall be admitted  
39 into evidence without the testimony of the analyst. Upon filing a timely objection, the  
40 admissibility of the report shall be determined and governed by the appropriate rules of evidence.  
41 The case shall be continued until the analyst can be present. The criminal case shall not be  
42 dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to appear  
43 after being ordered to appear by the court. If the proceeding at which the affidavit would be  
44 introduced into evidence under this subsection is continued, the notice provided by the State, the  
45 written objection filed by the defendant, or the failure of the defendant to file a written objection  
46 shall remain effective at any subsequent calendaring of that proceeding.

47 Nothing in subsection (e1) or subsection (e2) of this section precludes the right of any party to  
48 call any witness or to introduce any evidence supporting or contradicting the evidence contained in  
49 the affidavit.

50 (f) Evidence of Refusal Admissible. – If any person charged with an implied-consent  
51 offense refuses to submit to a chemical analysis or to perform field sobriety tests at the request of

1 an officer, evidence of that refusal is admissible in any criminal, civil, or administrative action  
2 against the person.

3 (g) Controlled-Drinking Programs. – The Department of Health and Human Services may  
4 adopt rules concerning the ingestion of controlled amounts of alcohol by individuals submitting to  
5 chemical testing as a part of scientific, experimental, educational, or demonstration programs.  
6 These regulations shall prescribe procedures consistent with controlling federal law governing the  
7 acquisition, transportation, possession, storage, administration, and disposition of alcohol intended  
8 for use in the programs. Any person in charge of a controlled-drinking program who acquires  
9 alcohol under these regulations must keep records accounting for the disposition of all alcohol  
10 acquired, and the records must at all reasonable times be available for inspection upon the request  
11 of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to  
12 control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic  
13 beverages in places in which they may be lawfully possessed, however, need not comply with the  
14 record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to  
15 the regulations reasonably done in furtherance of bona fide objectives of a controlled-drinking  
16 program authorized by the regulations are lawful notwithstanding the provisions of any other  
17 general or local statute, regulation, or ordinance controlling alcohol.

18 (h) Disposition of Blood Evidence. – Notwithstanding any other provision of law, any  
19 blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled  
20 substance or its metabolite, or any impairing substance pursuant to this section may be destroyed  
21 by the analyzing agency 12 months after the case is filed or after the case is concluded in the trial  
22 court and not under appeal, whichever is later, without further notice to the parties. However, if a  
23 Motion to Preserve the evidence has been filed by either party, the evidence shall remain in the  
24 custody of the analyzing agency or the agency that collected the sample until dispositive order of a  
25 court of competent jurisdiction is entered."

26 **SECTION 2.** This act becomes effective October 1, 2016, and applies to trials on or  
27 after that date.