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HOUSE BILL 59
Committee Substitute Favorable 3/4/15
Senate Judiciary I Committee Substitute Adopted 7/21/15

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 AND TO EXEMPT CERTAIN EX PARTE HEARINGS FROM
REPORTING REQUIREMENTS.

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



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 objection shall be deemed waived and the statement shall be
10 admitted into evidence without the necessity of a personal appearance by the
11 person signing the statement.

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

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

16"

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

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

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

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

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

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

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

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

41 ...

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

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

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

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

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

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

26 ...

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

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

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

13 ...

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

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

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

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

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

44"

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

46 "**§ 90-95. Violations; penalties.**

47 ...

48 (g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the
49 Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory,
50 Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or
51 contains a controlled substance, the report of that analysis certified to upon a form approved by

1 the Attorney General by the person performing the analysis shall be admissible without further
2 authentication and without the testimony of the analyst in all proceedings in the district court
3 and superior court divisions of the General Court of Justice as evidence of the identity, nature,
4 and quantity of the matter analyzed. Provided, however, the provisions of this subsection may
5 be utilized by the State only if:

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

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

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

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

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

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

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

1 "

2 **SECTION 5.** G.S. 7A-198(e) reads as rewritten:

3 "(e) Reporting will not be provided in ex parte or emergency hearings before a judge
4 pursuant to Chapter 50B or 50C of the General Statutes, trials before ~~magistrates~~-magistrates,
5 or in hearings to adjudicate and dispose of infractions in the district court."

6 **SECTION 6.** This act is effective when it becomes law. Sections 1 through 4 of
7 this act apply to notices of intent to introduce a statement or report provided by the State on or
8 after that date. Section 5 of this act applies to ex parte hearings conducted on or after that date.