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SESSION 2013

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SENATE DRS35013-LLa-25 (12/13)

Short Title: Western Crime Lab Funds/Amend Evidence Laws.

(Public)

Sponsors: Senator Apodaca (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO DIRECT, AND APPROPRIATE FUNDS FOR, THE CONSTRUCTION OF A WESTERN CRIME LABORATORY FACILITY AT THE WESTERN JUSTICE ACADEMY IN EDNEYVILLE, TO APPROPRIATE FUNDS TO PROVIDE STAFFING FOR THE LABORATORY, AND TO AMEND THE LAWS REGARDING THE ADMISSIBILITY OF LABORATORY REPORTS AFTER NOTICE AND DEMAND.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Justice shall construct a Western Regional Crime Laboratory to be located on the campus of the Western Justice Academy in Edneyville, consistent with plans developed by the Department pursuant to Section 15.4 of S.L. 2012-142.

SECTION 2. There is appropriated from the General Fund to the Department of Justice the sum of fourteen million dollars (\$14,000,000) for the 2013-2014 fiscal year to provide the capital costs for construction of a Western Regional Crime Laboratory, as directed by Section 1 of this act.

SECTION 3. There is appropriated from the General Fund to the Department of Justice the sum of one million nine hundred thousand dollars (\$1,900,000) for the 2013-2014 fiscal year and the sum of one million nine hundred thousand dollars (\$1,900,000) for the 2014-2015 fiscal year to establish 19 positions to staff the Western Regional Crime Laboratory upon its completion.

SECTION 4.(a) G.S. 8-58.20(f) reads as rewritten:

"(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 laboratory report and affidavit ~~may~~ 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.~~ analyst. 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."

SECTION 4.(b) G.S. 8-58.20(g)(5) reads as rewritten:

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

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

"(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the 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 4.(d)** 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 4.(e)** 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 4.(f)** 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 4.(g)** 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 statement 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 5.** Section 4 of this act becomes effective December 1, 2013, and
40 applies to proceedings occurring on or after that date. The remainder of this act becomes
41 effective July 1, 2013.