

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 630
Second Edition Engrossed 5/14/13
House Committee Substitute Favorable 6/5/13

Short Title: Evidence & DNA Expunction Laws.-AB

(Public)

Sponsors:

Referred to:

April 4, 2013

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 case is filed or after the case is
11 concluded in the trial court and not under appeal, whichever is later, without further notice to
12 the parties. However, if a Motion to Preserve the evidence has been filed by either party, the
13 evidence shall remain in the custody of the analyzing agency or the agency that collected the
14 sample until dispositive order of a court of 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



1 may be utilized in any administrative hearing, but can only be utilized in cases tried in the
2 district and superior court divisions, or in an adjudicatory hearing in juvenile court, 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 report ~~may~~shall be admitted into
13 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
14 of the report shall be determined and governed by the appropriate rules of evidence.

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

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

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

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

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

50 If the defendant's attorney of record, or the defendant if that person has no
51 attorney, fails to file a written objection as provided in this subsection, then

1 the statement ~~may~~shall be admitted into evidence without the necessity of a
2 personal appearance by the person signing the statement. Upon filing a
3 timely objection, the admissibility of the report shall be determined and
4 governed by the appropriate rules of evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 a. The State notifies the defendant at least 15 days before trial of its
20 intention to introduce the statement into evidence under this
21 subsection and provides the defendant with a copy of the statement,
22 and

23 b. The defendant fails to notify the State at least five days before trial
24 that the defendant objects to the introduction of the statement into
25 evidence.

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

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

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

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

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

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

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

43 a. Documenting expunction of the DNA record and destruction of the
44 DNA ~~sample,~~ or sample.

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

47 **SECTION 10.** Sections 2, 3, 4, 5, 6, 7, 8, and 9 of this act become effective
48 December 1, 2013, and apply to proceedings held on or after that date and verification forms
49 received by the SBI on or after that date. The remainder of this act is effective when it becomes
50 law.