

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 690
Committee Substitute Favorable 5/18/11
Third Edition Engrossed 5/19/11
Senate Judiciary I Committee Substitute Adopted 6/7/12

Short Title: Amend Evidence & DNA Expunction Laws.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING DISPOSITION OF BLOOD EVIDENCE,
ADMISSIBILITY OF REPORTS AFTER NOTICE AND DEMAND, AND
EXPUNCTION OF DNA SAMPLES TAKEN UPON ARREST, AND TO CHANGE THE
METHOD FOR DETERMINING THE SENIOR RESIDENT SUPERIOR COURT
JUDGE FOR A DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-139.1 is amended by adding a new section to read:

"(h) Disposition of Blood Evidence. – Notwithstanding any other provision of law, any blood or urine sample subject to chemical analysis for the presence of alcohol, a controlled substance or its metabolite, or any impairing substance pursuant to this section may be destroyed by the analyzing agency 12 months after the issuance date of the report of all examinations conducted, without further notice to the parties. However, if a Motion to Preserve the evidence has been filed by either party, the evidence shall remain in the custody of the analyzing agency or the agency that collected the sample until dispositive order of a court of competent jurisdiction is entered."

SECTION 2. 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. 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 3. 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. 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 Laboratory, or any other laboratory approved for chemical analysis by the Department of Health and Human Services, are admissible as evidence in all administrative hearings, and in



1 any court, without further authentication and without the testimony of the analyst. The results
2 shall be certified by the person who performed the analysis. The provisions of this subsection
3 may be utilized in any administrative hearing, but can only be utilized in cases tried in the
4 district and superior court divisions, or in an adjudicatory hearing in juvenile court, 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 report ~~may~~shall be admitted into
15 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
16 of the report shall be determined and governed by the appropriate rules of evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

49 If the defendant's attorney of record, or the defendant if that person has no attorney, fails to file
50 a written objection as provided in this subsection, then the report ~~may~~shall be admitted into

1 evidence without the testimony of the analyst. Upon filing a timely objection, the admissibility
2 of the report shall be determined and governed by the appropriate rules of evidence.

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

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

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

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

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

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

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

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

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

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

37 **SECTION 9.** G.S. 15A-266.3A reads as rewritten:

38 **"§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

39 ...
40 (i) ~~Prior to June 1, 2012, upon~~ Upon the occurrence of one of the events in
41 ~~sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section,~~ the defendant or the
42 defendant's counsel shall provide the prosecuting district attorney with a signed request form,
43 promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA
44 record be expunged from the DNA Database and that any biological samples in the DNA
45 Databank be destroyed. ~~On or after June 1, 2012, upon the occurrence of one of the events in~~
46 ~~sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, no request form~~
47 ~~shall be required and the prosecuting district attorney shall initiate the procedure provided in~~
48 ~~subsection (j) of this section.~~

49 (j) ~~Prior to June 1, 2012, within~~ Within 30 days of the receipt of the form required by
50 subsection (i) of this section ~~or the occurrence of one of the events in sub-subdivision a., b., or~~
51 ~~e. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30~~

1 ~~days of the occurrence of one of the events in subdivision (1) of subsection (h) of this section,~~
2 the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this
3 section, and if so, shall:

- 4 (1) Verify and indicate the facts of the qualifying event on a verification form
5 promulgated by the Administrative Office of the Courts.
 - 6 (2) Include the last known address of the defendant, as reflected in the court
7 files, on the verification form.
 - 8 (3) Sign the verification form or, if the defendant was acquitted or the charges
9 were dismissed by the court, obtain the signature of a judge.
 - 10 (4) Transmit the verification form to the SBI.
- 11 (k) Within ~~30~~90 days of receipt of the verification form, the SBI shall:
- 12 (1) Determine whether the requirement of subdivision (2) of subsection (h) of
13 this section has been met.
 - 14 (2) If the requirement has been met, remove the defendant's DNA record and
15 samples as required by subsection (h) of this section.
 - 16 (3) Mail to the defendant, at the address specified in the verification form, a
17 notice either:
 - 18 a. Documenting expunction of the DNA record and destruction of the
19 DNA sample, or
 - 20 b. Notifying the defendant that the DNA record and sample do not
21 qualify for expunction pursuant to subsection (h) of this section.

22"

23 **SECTION 10.** This act becomes effective December 1, 2012. Sections 2, 3, 4, 5,
24 6, 7, and 8 of this act apply to proceedings that occur on or after December 1, 2012.