

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 386  
Committee Substitute Favorable 4/3/13  
Third Edition Engrossed 4/11/13

Short Title: Evidence & DNA Expunction Laws.-AB

(Public)

Sponsors:

Referred to:

March 21, 2013

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.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-139.1 is amended by adding a new subsection 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 case is filed or after the case is concluded in the trial court and not under appeal, whichever is later, 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 any court, without further authentication and without the testimony of the analyst. The results 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)(3) reads as rewritten:

- 24 "(3) The provisions of this subsection may be utilized in any administrative  
25 hearing, but can only be utilized in cases tried in the district and superior  
26 court divisions, or in an adjudicatory hearing in juvenile court, if:  
27 a. The State notifies the defendant at least 15 business days before the  
28 proceeding at which the statement would be used of its intention to  
29 introduce the statement into evidence under this subsection and  
30 provides a copy of the statement to the defendant, and  
31 b. The defendant fails to file a written notification with the court, with a  
32 copy to the State, at least five business days before the proceeding at  
33 which the statement would be used that the defendant objects to the  
34 introduction of the statement into evidence.

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

41 ...."

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

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

48 ...."

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

50 "(g) Whenever matter is submitted to the North Carolina State Crime Laboratory, the  
51 Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory,

1 Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or  
 2 contains a controlled substance, the report of that analysis certified to upon a form approved by  
 3 the Attorney General by the person performing the analysis shall be admissible without further  
 4 authentication and without the testimony of the analyst in all proceedings in the district court  
 5 and superior court divisions of the General Court of Justice as evidence of the identity, nature,  
 6 and quantity of the matter analyzed. Provided, however, the provisions of this subsection may  
 7 be utilized by the State only if:

- 8 (1) The State notifies the defendant at least 15 business days before the  
 9 proceeding at which the report would be used of its intention to introduce the  
 10 report into evidence under this subsection and provides a copy of the report  
 11 to the defendant, and
- 12 (2) The defendant fails to file a written objection with the court, with a copy to  
 13 the State, at least five business days before the proceeding that the defendant  
 14 objects to the introduction of the 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 Nothing in this subsection precludes the right of any party to call any witness or to  
 20 introduce any evidence supporting or contradicting the evidence contained in the report."

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

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 report shall be determined and  
 35 governed by the appropriate rules of evidence."

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

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

- 38 (1) Determine whether the requirement of subdivision (2) of subsection (h) of  
 39 this section has been met.
- 40 (2) If the requirement has been met, remove the defendant's DNA record and  
 41 samples as required by subsection (h) of this section.
- 42 (3) Mail to the defendant, at the address specified in the verification form, a  
 43 notice ~~either:~~doing either of the following:  
 44 a. Documenting expunction of the DNA record and destruction of the  
 45 DNA ~~sample, or~~sample.  
 46 b. Notifying the defendant that the DNA record and sample do not  
 47 qualify for expunction pursuant to subsection (h) of this section."

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