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SENATE DRS85199-LR-82 (03/06)

Short Title: Admissibility of Forensic Evidence.

(Public)

Sponsors: Senator J. Davis (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO THE ADMISSIBILITY OF FORENSIC EVIDENCE.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 8-58.20 reads as rewritten:

5 "**§ 8-58.20. Forensic analysis admissible as evidence.**

6 (a) In any criminal prosecution, a laboratory report of a written forensic analysis,
7 including an analysis of the defendant's DNA, or a forensic sample alleged to be the defendant's
8 DNA, as that term is defined in G.S. 15A-266.2(2), that states the results of the analysis and
9 that is signed and sworn to by the person performing the analysis may be admissible in
10 evidence without the testimony of the analyst who prepared the report in accordance with the
11 requirements of this section.

12 (b) A forensic analysis, to be admissible under this section, ~~shall be performed by a~~
13 ~~laboratory that is accredited by an accrediting body that requires conformance to forensic~~
14 ~~specific requirements and which is a signatory to the International Laboratory Accreditation~~
15 ~~Cooperation (ILAC) Mutual Recognition Arrangement For Testing for the submission,~~
16 ~~identification, analysis, and storage of forensic analyses. The including analyses of DNA~~
17 ~~samples and typing results of DNA samples shall be performed by a laboratory that is~~
18 ~~accredited by an accrediting body that requires conformance to forensic specific requirements~~
19 ~~and which is a signatory to the ILAC Mutual Recognition Arrangement For Testing. an~~
20 individual who can demonstrate the necessary expertise under G.S. 8C-1, Rule 702(a)(1), (2),
21 and (3). Procedures for establishing chain of custody without calling unnecessary witnesses
22 shall be governed by the requirements set forth in subsection (g) of this section which may be
23 made by affidavit.

24 (c) The analyst who analyzes the ~~forensic~~ sample and signs the report shall complete an
25 ~~affidavit on a form developed by the State Bureau of Investigation. affidavit.~~ In the affidavit,
26 the analyst shall state (i) that the person is qualified by education, training, and experience to
27 perform the analysis, (ii) the name and location of the laboratory where the analysis was
28 performed, and (iii) that performing the analysis is part of that person's regular duties. The
29 analyst shall also aver in the affidavit that the tests were performed pursuant to ~~the accrediting~~
30 ~~body's standards for that~~ that individual's and that laboratory's accrediting body's standards for
31 that discipline and that the evidence was handled in accordance with established and accepted
32 procedures while in the custody of the laboratory. The affidavit shall be sufficient to constitute
33 prima facie evidence regarding the person's qualifications. The analyst shall attach the affidavit
34 to the laboratory report and shall provide the affidavit to the investigating officer and the
35 district attorney in the prosecutorial district in which the criminal charges are pending. An
36 affidavit by a forensic-an analyst sworn to and properly executed before an official authorized



1 to administer ~~oaths~~ oaths, such as a notary public, is admissible in evidence without further
2 authentication in any criminal ~~proceeding~~ proceeding, subject to the requirements of this
3 section, with respect to the ~~forensic~~ analysis administered and the procedures followed. With
4 regards to findings under G.S. 8C-1, Rule 702(a)(1), (2), and (3), the court shall take judicial
5 notice of and apply the following:

6 (1) An analysis of the defendant's blood, breath, or urine shall qualify under
7 Rule 702(a)(1) as sufficient data;

8 (2) The principles and methods previously accepted as reliable within the
9 meaning of Rule 702(a)(2) by the appellate courts of this State. These
10 include, by way of illustration and not limitation, gas headspace
11 chromatography, gas chromatography-mass spectrometry, liquid
12 chromatography-mass spectrometry, and liquid chromatography with
13 tandem mass spectrometric detection methods; and

14 (3) That a defendant who has failed to object under the notice and demand
15 statute has waived any and all objection under Rule 702(a)(3).

16 (d) The district attorney shall serve a copy of the laboratory report and affidavit and
17 indicate whether the report and affidavit will be offered as evidence at any proceeding against
18 the defendant on the attorney of record for the defendant, or on the defendant if that person has
19 no attorney, no later than five business days after receiving the report and affidavit, or 30
20 business days before any proceeding in which the report may be used against the defendant,
21 whichever occurs first.

22 (e) Upon receipt of a copy of the laboratory report and affidavit, the attorney of record
23 for the defendant or the defendant if that person has no attorney, shall have 15 business days to
24 file a written objection to the use of the laboratory report and affidavit at any proceeding
25 against the defendant. The written objection shall be filed with the court in which the matter is
26 pending with a copy provided to the district attorney.

27 (f) If the defendant's attorney of record, or the defendant if that person has no attorney,
28 fails to file a written objection with the court to the use of the laboratory report and affidavit
29 within the time allowed by this section, then the laboratory report and affidavit may be
30 admitted in evidence in any proceeding without the testimony of the analyst subject to the
31 presiding judge ruling otherwise at the proceeding when offered. If, however, a written
32 objection is filed, this section does not apply and the admissibility of the evidence shall be
33 determined and governed by the appropriate rules of evidence.

34 (g) Procedure for Establishing Chain of Custody of Evidence Subject to Forensic
35 Analysis Without Calling Unnecessary Witnesses. –

36 (1) For the purpose of establishing the chain of physical custody or control of
37 evidence that has been subjected to forensic analysis performed as provided
38 in subsection (b) of this section, a statement signed by each successive
39 person in the chain of custody that the person delivered it to the other person
40 indicated on or about the date stated is prima facie evidence that the person
41 had custody and made the delivery as stated, without the necessity of a
42 personal appearance in court by the person signing the statement.

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

48 (3) The provisions of this subsection may be utilized by the State only if (i) the
49 State notifies the defendant at least 15 business days before any proceeding
50 at which the statement would be used of its intention to introduce the
51 statement into evidence under this subsection and provides the defendant

1 with a copy of the statement and (ii) the defendant fails to file a written
2 notification with the court, with a copy to the State, at least five business
3 days before the proceeding that the defendant objects to the introduction of
4 the statement into evidence.

5 (4) In lieu of the notice required in subdivision (3) of this subsection, the State
6 may include the statement with the laboratory report and affidavit, as
7 provided in subsection (d) of this section.

8 (5) If the defendant's attorney of record, or the defendant if that person has no
9 attorney, fails to file the written objection as provided in this subsection,
10 then the statement may be admitted into evidence without the necessity of a
11 personal appearance by the 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 **SECTION 2.** This act becomes effective December 1, 2013.