

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 252*
State and Local Government Committee Substitute Adopted 5/5/09
House Committee Substitute Favorable 8/3/09

Short Title: Comply with Melendez-Diaz Decision.

(Public)

Sponsors:

Referred to:

February 23, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND STATE LAW REGARDING THE INTRODUCTION OF LAB
3 REPORTS AND RELATED DOCUMENTS TO COMPLY WITH REQUIREMENTS OF
4 THE UNITED STATES SUPREME COURT DECISION IN MELENDEZ-DIAZ V.
5 MASSACHUSETTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 8-58.20(d) reads as rewritten:

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

14 **SECTION 2.** G.S. 8-58.20 is amending by adding a new subsection to read:

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

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

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

29 (3) The provisions of this subsection may be utilized by the State only if (i) the
30 State notifies the defendant at least 15 business days before any proceeding
31 at which the statement would be used of its intention to introduce the
32 statement into evidence under this subsection and provides the defendant
33 with a copy of the statement and (ii) the defendant fails to file a written
34 notification with the court, with a copy to the State, at least five business
35 days before the proceeding that the defendant objects to the introduction of
36 the statement into evidence.



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

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

8 (6) Upon filing a timely objection, the admissibility of the statement shall be
9 determined and governed by the appropriate rules of evidence.

10 Nothing in this subsection precludes the right of any party to call any witness or to
11 introduce any evidence supporting or contradicting the evidence contained in the statement."

12 **SECTION 3.** G.S. 20-139.1(c1) reads as rewritten:

13 "(c1) Admissibility. – The results of a chemical analysis of blood or urine reported by the
14 North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police
15 Department Laboratory, or any other laboratory approved for chemical analysis by the
16 Department of Health and Human Services, are admissible as evidence in all administrative
17 hearings, and in any court, without further authentication.–authentication and without the
18 testimony of the analyst. The results shall be certified by the person who performed the
19 analysis. However,–The provisions of this subsection may be utilized in any administrative
20 hearing, but can only be utilized in cases tried in the district and superior court divisions, or in
21 an adjudicatory hearing in juvenile court, if:if the defendant notifies the State, at least five days
22 before trial in the superior court division or an adjudicatory hearing in juvenile court that the
23 defendant objects to the introduction of the report into evidence,

24 (1) The State notifies the defendant at least 15 business days before the
25 proceeding at which the evidence would be used of its intention to introduce
26 the report into evidence under this subsection and provides a copy of the
27 report to the defendant, and

28 (2) The defendant fails to file a written objection with the court, with a copy to
29 the State, at least five business days before the proceeding at which the
30 report would be used that the defendant objects to the introduction of the
31 report into evidence.

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

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

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

44 **SECTION 4.** G.S. 20-139.1(c3) reads as rewritten:

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

47
48 (1) For the purpose of establishing the chain of physical custody or control of
49 blood or urine tested or analyzed to determine whether it contains alcohol, a
50 controlled substance or its metabolite, or any impairing substance, a
51 statement signed by each successive person in the chain of custody that the

1 person delivered it to the other person indicated on or about the date stated is
 2 prima facie evidence that the person had custody and made the delivery as
 3 stated, without the necessity of a personal appearance in court by the person
 4 signing the statement.

5 (2) The statement shall contain a sufficient description of the material or its
 6 container so as to distinguish it as the particular item in question and shall
 7 state that the material was delivered in essentially the same condition as
 8 received. The statement may be placed on the same document as the report
 9 provided for in subsection (c1) of this section.

10 (3) The provisions of this subsection may be utilized in any administrative
 11 ~~hearing and by the State in district court, hearing,~~ but can only be utilized in
 12 cases tried in the district and superior court divisions, or in an adjudicatory
 13 hearing in juvenile court, if a case originally tried in superior court or an
 14 adjudicatory hearing in juvenile court if the defendant fails to notify the
 15 State at least five days before trial that the defendant objects to the
 16 introduction of the statement into evidence.

17 a. The State notifies the defendant at least 15 business days before the
 18 proceeding at which the statement would be used of its intention to
 19 introduce the statement into evidence under this subsection and
 20 provides a copy of the statement to the defendant, and

21 b. The defendant fails to file a written notification with the court, with a
 22 copy to the State, at least five business days before the proceeding at
 23 which the statement would be used that the defendant objects to the
 24 introduction of the statement into evidence.

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

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

34 **SECTION 5.** G.S. 20-139.1(e1) reads as rewritten:

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

40 (1) The alcohol concentration or concentrations or the presence or absence of an
 41 impairing substance of a person given a chemical analysis and who is
 42 involved in the hearing or trial.

43 (2) The time of the collection of the blood, breath, or other bodily fluid or
 44 substance sample or samples for the chemical analysis.

45 (3) The type of chemical analysis administered and the procedures followed.

46 (4) The type and status of any permit issued by the Department of Health and
 47 Human Services that the analyst held on the date the analyst performed the
 48 chemical analysis in question.

49 (5) If the chemical analysis is performed on a breath-testing instrument for
 50 which regulations adopted pursuant to subsection (b) require preventive
 51 maintenance, the date the most recent preventive maintenance procedures

1 were performed on the breath-testing instrument used, as shown on the
2 maintenance records for that instrument.
3 The Department of Health and Human Services shall develop a form for use by chemical
4 analysts in making this affidavit. ~~If any person who submitted to a chemical desires that a~~
5 ~~chemical analyst personally testify in the hearing or trial in the District Court Division, the~~
6 ~~person may subpoena the chemical analyst and examine him as if he were an adverse witness.~~
7 ~~A subpoena for a chemical analyst shall not be issued unless the person files in writing with the~~
8 ~~court and serves a copy on the district attorney at least five days prior to trial an affidavit~~
9 ~~specifying the factual grounds on which the person believes the chemical analysis was not~~
10 ~~properly administered and the facts that the chemical analyst will testify about and stating that~~
11 ~~the presence of the analyst is necessary for the proper defense of the case. The district court~~
12 ~~shall determine if there are grounds to believe that the presence of the analyst requested is~~
13 ~~necessary for the proper defense. If so, the case shall be continued until the analyst can be~~
14 ~~present. The criminal case shall not be dismissed due to the failure of the analyst to appear,~~
15 ~~unless the analyst willfully fails to appear after being ordered to appear by the court."~~

16 **SECTION 6.** G.S. 20-139.1 is amended by adding a new subsection to read:

17 "(e2) Except as governed by subsection (c1), (c2), or (c3) of this section, the State can
18 only use the provisions of subsection (e1) of this section if:

19 (1) The State notifies the defendant at least 15 business days before the
20 proceeding at which the affidavit would be used of its intention to introduce
21 the affidavit into evidence under this subsection and provides a copy of the
22 affidavit to the defendant, and

23 (2) The defendant fails to file a written notification with the court, with a copy
24 to the State, at least five business days before the proceeding at which the
25 affidavit would be used that the defendant objects to the introduction of the
26 affidavit into evidence.

27 The failure to file a timely objection as provided in this subsection shall be deemed a
28 waiver of the right to object to the admissibility of the affidavit. Upon filing a timely objection,
29 the admissibility of the report shall be determined and governed by the appropriate rules of
30 evidence. The case shall be continued until the analyst can be present. The criminal case shall
31 not be dismissed due to the failure of the analyst to appear, unless the analyst willfully fails to
32 appear after being ordered to appear by the court. Nothing in subsection (e1) or subsection (e2)
33 of this section precludes the right of any party to call any witness or to introduce any evidence
34 supporting or contradicting the evidence contained in the affidavit."

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

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

47 (1) The State notifies the defendant at least 15 business days before ~~trial~~ the
48 proceeding at which the report would be used of its intention to introduce the
49 report into evidence under this subsection and provides a copy of the report
50 to the defendant, and

1 (2) The defendant fails to file a written objection with the court, with a copy to
2 the State, ~~notify the State~~ at least five business days before ~~trial~~ the
3 proceeding that the defendant objects to the introduction of the report into
4 evidence.

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

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

11 **SECTION 8.** This act becomes effective October 1, 2009, and applies to offenses
12 committed on or after that date. Nothing in this act shall be construed to abrogate any judicial
13 or administrative rulings or decisions prior to the effective date of this act that (i) allowed or
14 disallowed the introduction of evidence or (ii) validated or invalidated procedures used for the
15 introduction of evidence.