



HOUSE BILL 357: Chemical Analysis Reports/District Court.

2016-2017 General Assembly

Committee:	Senate Judiciary II	Date:	April 25, 2016
Introduced by:	Reps. Stam, Faircloth, Glazier, Hurley	Prepared by:	Tawanda N Foster
Analysis of:	PCS to Second Edition H357-CSTV-29		Staff Attorney

SUMMARY: *The PCS to House Bill 357 amends when a written chemical analysis report may be introduced into evidence without expert testimony.*

CURRENT LAW: G.S. 20-139.1 provides procedures governing the admissibility and use of chemical analysis evidence in implied-consent offenses. The provisions of this statute control when chemical analysis evidence is admissible, valid testing methods and standards for chemical analysis, standards for controlled-drinking programs, and the disposition of blood evidence.

BILL ANALYSIS: The PCS amends subsections (c1), (c3), and (e2) of the current law as follows:

1. Amends the notice and demand procedures governing the admissibility of chemical analysis evidence by requiring the State to provide notice no later than 15 business days after receiving the report.
2. Adds provisions for notice and demand procedures when a proceeding is continued.

EFFECTIVE DATE: This act would become effective on October 1, 2016 and applies to trials commencing on or after that date.

BACKGROUND: The Sixth Amendment to the United States Constitution provides that in criminal prosecutions the accused has a right to be confronted with the witnesses against him. This provision is known as the "confrontation clause." There are a significant number of federal and state cases that govern the admissibility of testimonial evidence and the accused's right to confront witnesses against him, especially as it relates to driving while impaired and drug cases.

Confrontation clause rights, like many constitutional rights generally, may be waived. To be valid a waiver of a constitutional right must be knowing, voluntary, and intelligent. North Carolina, like some other states, has enacted notice and demand statutes to address constitutional concerns and ensure valid waivers where necessary. Notice and demand statutes require the prosecution to give a defendant notice that it intends to introduce a testimonial forensic or chemical analysis report at trial. A defendant then has a period of time in which to object to the admission of the evidence absent the analyst's appearance live at trial. The following statutes currently include notice and demand provisions: G.S. 8-58.20, 20-139.1, and 90-95.

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State v. Smith [312 N.C. 361 (1984)], held it is permissible in criminal prosecutions in district court for a chemical analyst's affidavit to be entered into evidence in lieu of testimony by the analyst. The N.C. Supreme Court in *Smith* opined the defendant's right to confront the analyst under the confrontation clause in district court is ultimately guaranteed by the right to trial de novo in superior court. Subsequent rulings from the United States Supreme Court [*Crawford v. Washington*, 541 U.S. (2004) and *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)] further defined the use of forensic reports and chemical analysis at trial. None of the recent rulings from the U.S. Supreme Court overturned the aforementioned premise in *Smith*. The N.C. Court of Appeals opinion in *State v. Burrow* [227 N.C. App. 568 (2013)] upheld the conviction of a defendant for drug trafficking charges where the State complied with the notice and demand statute requirements in G.S. 90-95(g) in introducing the analyst's affidavit and report into evidence at trial.