



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: Trial Court Officials
FROM: Lindsey W. Spain
Assistant Legal Counsel
DATE: December 21, 2021
SUBJECT: 2021 Legislation – S.L. 2021-180 – Evidence and District Court Speedy Trials¹

On November 18, 2021, the Governor signed into law S.L. 2021-180 (SB 105). This memo summarizes the changes made to the admissibility of forensic and chemical analyst reports and testimony as well as chain of custody witness testimony in district court. These changes take effect on January 1, 2022 and apply to all criminal proceedings, administrative hearings, and juvenile court adjudicatory hearings beginning on or after that date.²

I. Remote Testimony of Forensic Analyst and Chain of Custody Witnesses in District Court

S.L. 2021-180, sec. 16-17.(c) amends G.S. 15A-1225.3 to establish separate procedures for remote testimony by a chemical analyst depending on whether the case is in superior court or district court. G.S. 15A-1225.3(a)(1) now defines “criminal proceeding” as only hearings or trials in superior court or any hearings or proceedings conducted in juvenile delinquency court, and the newly-created G.S. 15A-1225.3(a)(1a) sets out a separate definition for district court proceedings. The current provisions governing remote testimony of a forensic analyst set out in G.S. 15A-1225.3(b) now only apply to superior court and juvenile delinquency hearings or proceedings.

S.L. 2021-180, sec. 16.17.(c) creates G.S. 15A-1225.3(b1) that establishes a new procedure for the admissibility of not only forensic analyst remote testimony in district court, but also the remote testimony of chain of custody witnesses in district court. Under this new provision, both the testimony of an analyst regarding the results of forensic testing deemed admissible pursuant to G.S. 8-58.20³ and the testimony of each person associated with the chain of custody admissible pursuant to G.S. 8-58.20(g)⁴ **shall** be permitted by remote testimony in district court if both of the following occurred:

¹ For future reference, a copy of this memo will be available on the Administrative Office of the Courts (NCAOC)'s Juno site for Judicial Branch users at <http://juno.nccourts.org/legal-memos>, under the memo list for Criminal Memos. For additional discussion of these changes to remote testimony in district court enacted by S.L. 2021-180, see Shea Denning, *Remote Testimony by Lab Analysts Authorized in District Court Prosecutions – Even Without Defendants' Consent*, N.C. Crim. L., UNC Sch. Of Gov't Blog (Dec. 6, 2021), [Remote Testimony by Lab Analysts Authorized in District Court Prosecutions – Even Without Defendants' Consent – North Carolina Criminal Law](https://www.unc.edu/remote-testimony-by-lab-analysts-authorized-in-district-court-prosecutions-even-without-defendants-consent-north-carolina-criminal-law) ([unc.edu](https://www.unc.edu)).

² S.L. 2021-180, sec. 16.17.(e)

³ Statute in the N.C. Evidence Code which establishes admissibility requirements of forensic reports and analyses.

⁴ Evidence statute for “Procedure for Establishing Chain of Custody of Evidence Subject to Forensic Analysis Without Calling Unnecessary Witnesses.”



- The State provided a copy of the full laboratory report package to the defense.⁵
- The State notified the defense at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the results of forensic testing into evidence using remote testimony in real time.

The above provisions do not apply to the admissibility of evidence at a criminal proceeding in superior court, including a trial de novo.⁶

Conforming changes are made to G.S. 15A-1225.3(c) to comply with the expanded allowance in district court for remote testimony of chain of custody witnesses in addition to forensic analyst remote testimony as provided for in G.S. 15A-1225.3(b1). S.L. 2021-180, sec. 16.17.(c) amends G.S. 15A-1225.3(d) to specifically preclude any party from calling as a witness an analyst or associated chain of custody witness who was made available via remote testimony in real time in a district court proceeding. Without an appropriation of funds for this purpose, the North Carolina Administrative Office of the Courts (NCAOC) or the State Crime Laboratory are not obligated to incur expenses related to remote testimony.⁷

II. Remote Testimony of Chemical Analyst and Chain of Custody Witnesses in District Court for Chapter 20 Offenses

S.L. 2021-180, sec. 16.17.(d) updates the parallel provision in Chapter 20 (G.S. 20-139.1) which governs the admissibility of chemical analyst remote testimony in driving while impaired cases and other motor vehicle offenses. Most notably, a new provision is created as G.S. 20-139.1(c6) which allows that both the testimony of an analyst regarding the results of a chemical analysis of blood or urine admissible pursuant to subsection (c1) of this section and the testimony of each person associated with the chain of custody pursuant to subsection (c3) of this section **shall** be permitted by remote testimony in district court if both of the following occurred:

- The State provided a copy of the report to the defense.
- The State notified the defense at least 15 business days before the proceeding at which the evidence would be used of its intention to introduce the testimony regarding the chemical analysis into evidence using remote testimony.⁸

G.S. 20-139.1(c6) further details that the method used for remote testimony authorized by this section must allow the trier of fact and all parties the ability to observe the demeanor of the witness as the witness testifies and that the court shall ensure that the defense has a full and fair opportunity for examination and cross-examination of the remote witness.

Conforming changes are made throughout G.S. 20-139.1 to coincide with this new provision so that it is clear that any party is precluded from calling as a witness a chemical analyst or any associated chain of custody witness who was made available via remote testimony in district court.⁹ Without an appropriation of funds for this purpose, the NCAOC or the State Crime Laboratory are not obligated to incur expenses related to remote testimony.¹⁰

⁵ For ease of reading, this memo uses the term “defense” in lieu of the statute’s wording: “...the attorney of record for the defendant, or to the defendant if that person has no attorney.” See G.S. 15A-1225.3(b1)(1).

⁶ G.S. 15A-1225.3(b1).

⁷ G.S. 15A-1225.3(e).

⁸ The existing procedure for remote testimony by an analyst and associated chain of custody witnesses in G.S. 20-139.1(c5) was amended by S.L. 2021-180, sec.16.17.(d) to only apply in “all administrative hearings, and in any superior court...”

⁹ See G.S. 20-139.1(c1); G.S. 20-139.1(c3)(4); G.S. 20-139.1(e2).

¹⁰ G.S. 20-139.1(c6).

III. Admission of Forensic Report Without Analyst Testimony Required if Statutory Requirements Met

S.L. 2021-180, sec. 16.17.(b) amends G.S. 8-58.20(a) of the North Carolina Rules of Evidence to now mandate that a laboratory report of a written forensic analysis **shall** be admissible as evidence without the testimony of the analyst if it otherwise meets the statutory requirements described in that statute. Currently, judges have discretion as to whether to admit this report, but the new law changes this to mandatory admissibility of laboratory reports of a written forensic analysis without the testimony of the analyst if the requirements set out in G.S. 8-58.20 are all met.

A conforming change is also made to G.S. 8-58.20(g) to align with the changes made in G.S. 15A-1225.3 and G.S. 20-139.1 that precludes any party from calling as a witness a chemical analyst or any associated chain of custody witness who was made available via remote testimony in real time in district court.

IV. New NCAOC Form: Notice of Intent to Use Remote Testimony of Analyst and Chain of Custody Witnesses in District Court (AOC-CR-346)

To address the above changes made to the admissibility of remote testimony of forensic and chemical analysts and the associated chain of custody witnesses in district court, NCAOC created a new form (AOC-CR-346) to provide notice to the defense as required by the statutes. This form will be made available on January 1, 2022 and can be used in district court for both forensic analyst remote testimony pursuant to G.S. 15A-1225.3(b1) and chemical analyst remote testimony in blood or urine cases pursuant to G.S. 20-139.1(c6).

V. Conclusion

Court officials with questions about the changes described above should feel free to contact me at Lindsey.W.Spain@nccourts.org. Questions about the use of NCAOC's automated systems, forms, and recordkeeping procedures should be directed to the field support analysts for the official's county from the NCAOC's Business Analysis and Process Management Division. Counsel for the NCAOC cannot provide legal advice to entities outside the Judicial Branch. Law enforcement officers, officials of other agencies external to the Judicial Branch, and other interested parties with questions about the impact of the legislation discussed above should consult their respective counsel.