

2020 Regular Session

SENATE BILL NO. 229

BY SENATOR MCMATH

EVIDENCE. Provides relative to evidence from criminalistics laboratories in Certificates of Analysis in juvenile court proceedings of a noncriminal nature. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 15:500 through 502, relative to evidence from criminalistics
3 laboratories; to provide relative to information pertaining to certificates of analysis;
4 to provide with respect to admissibility as evidence; to provide with respect to notice
5 of opposing party and certification of subpoena request; to provide with respect to
6 time delays to provide notice; to provide relative to testimony by simultaneous
7 broadcast; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 15:500 through 502 are hereby amended and reenacted to read as
10 follows:

11 §500. Admissibility

12 In all criminal cases; and in all cases in juvenile **court**; or **in all** family courts
13 which are of a criminal nature, and in civil forfeiture proceedings arising from
14 criminal activity, the courts of this state shall receive as evidence any certificate
15 made in accordance with R.S. 15:499 subject to the conditions contained in this
16 Section and R.S. 15:501. The certificate shall be received in evidence as prima facie
17 proof of the facts shown thereon, and as prima facie proof of proper custody of the

1 physical evidence listed thereon from time of delivery of ~~said~~ **the** evidence to the
2 facility until its removal therefrom.

3 §501. Notice of opposing party and opportunity to cross-examine expert;
4 certification of subpoena request

5 A. **Except as provided in Subsection F of this Section, the** ~~The~~ party
6 seeking to introduce a certificate made in accordance with R.S. 15:499 shall, not less
7 than forty-five days prior to the commencement of the trial, give written notice of
8 intent to offer proof by certificate. Such notice shall include a copy of the certificate.

9 B. The attorney for the defendant, or the defendant acting in his own defense,
10 if not represented by counsel, may demand that the person making the examination
11 or analysis testify by filing a written demand and serving it upon the **department**
12 **attorney,** district attorney, or attorney general seeking to introduce the certificate.
13 If such a demand is made timely as set forth below, the certificate shall not constitute
14 prima facie proof of the facts thereon as set forth in R.S. 15:500.

15 C. Demand for the testimony of the person making the examination or
16 analysis shall be filed and served by counsel for the defendant, or by a defendant
17 acting as his own counsel, **except as provided in Subsection F of this Section,**
18 within thirty days of the receipt of the notice provided for in Subsection A of this
19 Section. The trial court may extend ~~this thirty-day~~ **the** period for good cause shown
20 if such request is made prior to the expiration of the ~~thirty days~~ **period.**

21 D. If no request for additional time is made prior to the expiration of the
22 ~~thirty-day~~ period, an extension of time in which to make such a demand may be
23 made only upon a showing of exceptional circumstances. Any allegation that such
24 circumstances exist shall constitute a preliminary plea on the defendant's behalf for
25 the purposes of Louisiana Code of Criminal Procedure Article 580. The demand
26 shall be made in writing and notice shall be served on the **department attorney,**
27 district attorney, or the attorney general prosecuting the matter. The court shall
28 conduct a contradictory hearing to determine if the extension is warranted.

29 E. The filing of a demand by the defendant does not prevent the admission

1 of the certificate or its contents in any other manner otherwise appropriate pursuant
2 to the Louisiana Code of Evidence or its ancillaries.

3 **F. A party in a case in juvenile court which is of a noncriminal nature**
4 **seeking to introduce a certificate made in accordance with R.S. 15:499 shall, not**
5 **less than five days prior to the commencement of the trial, give written notice**
6 **of intent to offer proof of certificate. Such notice shall include a copy of the**
7 **certificate. Demands for testimony made pursuant to Subsection B of this**
8 **Section shall be made within three days of receipt of the notice.**

9 §502. Testimony by simultaneous broadcast

10 A. The court may authorize the following persons to testify by simultaneous
11 transmission through audiovisual equipment, if such technology is available in the
12 courtroom, during any criminal proceeding; juvenile **court proceeding**; or **any**
13 family court proceeding which is of a criminal nature, and any civil forfeiture
14 proceeding arising from alleged criminal activity:

15 (1) Employees of criminalistics laboratories.

16 (2) Coroners.

17 (3) Forensic pathologists.

18 (4) Any other person practicing in the field of knowledge and expertise in the
19 gathering, examination, and analysis of evidence by scientific means.

20 B. The party seeking to offer testimony as provided in Subsection A of this
21 Section shall, **in all cases, except those in juvenile court which are of a**
22 **noncriminal nature**, provide written notice to opposing counsel not less than thirty
23 days prior to the commencement of the proceeding. **A party in a case in juvenile**
24 **court which is of a noncriminal nature seeking to offer testimony as provided**
25 **in Subsection A of this Section shall provide written notice to opposing counsel**
26 **not less than three days prior to the commencement of the proceeding.**

27 * * *

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

SB 229 Reengrossed

2020 Regular Session

McMath

Present law provides that in all criminal cases and in all cases in juvenile or family courts which are of a criminal nature, and in civil forfeiture proceedings arising from criminal activity, the courts of this state shall receive as evidence any certificate made in accordance with present law subject to the conditions contained in this present law. The certificate shall be received in evidence as prima facie proof of the facts shown thereon, and as prima facie proof of proper custody of the physical evidence listed thereon from time of delivery of said evidence to the facility until its removal therefrom.

Proposed law retains present law and clarifies that present law applies to all cases in juvenile court or in all family courts.

Present law provides that except as provided in proposed law, the party seeking to introduce a certificate made in accordance with present law shall, not less than 45 days prior to the commencement of the trial, give written notice of intent to offer proof by certificate. Such notice shall include a copy of the certificate.

Present law provides that the attorney for the defendant, or the defendant acting in his own defense, if not represented by counsel, may demand that the person making the examination or analysis testify by filing a written demand and serving it upon the district attorney or attorney general seeking to introduce the certificate. If such a demand is made timely as set forth below, the certificate shall not constitute prima facie proof of the facts thereon as set forth in present law.

Proposed law retains present law and adds the department attorney to the persons upon which the defendant may demand that the person making the examination or analysis testify by filing a written demand and serving it upon, seeking to introduce the certificate.

Present law provides that demand for the testimony of the person making the examination or analysis shall be filed and served by counsel for the defendant, or by a defendant acting as his own counsel, within 30 days of the receipt of the notice provided for in present law. The trial court may extend this 30-day period for good cause shown if such request is made prior to the expiration of the 30 days.

Proposed law provides that demand for the testimony of the person making the examination or analysis shall be filed and served by counsel for the defendant, or by a defendant acting as his own counsel, except as provided in proposed law, within 30 days of the receipt of the notice provided for in present law. The trial court may extend the period for good cause shown if such request is made prior to the expiration of the period.

Present law provides that if no request for additional time is made prior to the expiration of the 30-day period, an extension of time in which to make such a demand may be made only upon a showing of exceptional circumstances. Any allegation that such circumstances exist shall constitute a preliminary plea on the defendant's behalf for the purposes of present law. Present law further provides that the demand shall be made in writing and notice shall be served on the district attorney or the attorney general prosecuting the matter. The court shall

conduct a contradictory hearing to determine if the extension is warranted.

Proposed law retains present law but removes the "30-day period" and adds the department attorney to the persons upon which the defendant may demand that the person making the examination or analysis testify by filing a written demand and serving it upon, seeking to introduce the certificate.

Proposed law provides that a party in a case in juvenile court which is of a noncriminal nature seeking to introduce a certificate made in accordance with present law shall, not less than five days prior to the commencement of the trial, give written notice of intent to offer proof of certificate. Such notice shall include a copy of the certificate. Demands for testimony made pursuant to present law shall be made within three days of receipt of the notice.

Present law provides that the court may authorize the following persons to testify by simultaneous transmission through audiovisual equipment, if such technology is available in the courtroom, during any criminal proceeding, juvenile or family court proceeding which is of a criminal nature, and any civil forfeiture proceeding arising from alleged criminal activity:

- (1) Employees of criminalistics laboratories.
- (2) Coroners.
- (3) Forensic pathologists.
- (4) Any other person practicing in the field of knowledge and expertise in the gathering, examination, and analysis of evidence by scientific means.

Proposed law retains present law but clarifies that present law applies to any juvenile court proceeding or any family court proceeding.

Present law provides that the party seeking to offer testimony as provided in present law shall provide written notice to opposing counsel not less than 30 days prior to the commencement of the proceeding.

Proposed law provides that the party seeking to offer testimony as provided in present law shall, in all cases, except those in juvenile court which are of a noncriminal nature, provide written notice to opposing counsel not less than 30 days prior to the commencement of the proceeding. Proposed law further provides that a party in a case in juvenile court which is of a noncriminal nature seeking to offer testimony as provided in present law shall provide written notice to opposing counsel not less than three days prior to the commencement of the proceeding.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 15:500-502)