

## The Commonwealth of Massachusetts

## **In the Year Two Thousand Nine**

AN ACT ESTABLISHING PROCEDURES FOR THE USE OF CERTIFICATES OF ANALYSIS IN CRIMINAL TRIALS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1 . Chapter 278 of the General Laws, as appearing in the 2006 Official  
2 Edition, is hereby amended by inserting after section 6A the following section:-  
3  
4 Section 6B. (a) A certificate of analysis prepared under sections 39 or 41 of chapter  
5 22C, section 24(1)(e) of chapter 90, section 13 of chapter 111, section 36 of chapter 138 or  
6 section 121A of chapter 140 shall be admissible in a criminal, delinquency or youthful offender  
7 trial as prima facie evidence of the matters specified in those sections without requiring live  
testimony subject to the following procedures:

14 good cause shown, and shall include a statement that defendants who fail to comply with  
15 paragraph 2 of this section forfeit their right to demand that the Commonwealth call the analyst  
16 as a witness at trial. Where notice is not included in the conference report, a certificate of service  
17 shall be affixed to the notice.

18 (2) If a defendant objects to admission of the certificate without the opportunity to  
19 confront the analyst, the defendant shall file with the clerk of the court in which the case is  
20 pending and serve on the Commonwealth an objection and demand for an analyst's presence.  
21 The objection and demand shall be filed on or before the date of the pretrial hearing scheduled  
22 pursuant to Rule 11 of the Massachusetts Rules of Criminal Procedure, or at a later date by leave  
23 of the court for good cause shown, and, in all events, no later than the compliance hearing  
24 scheduled pursuant to said Rule 11. A certificate of service shall be affixed to the objection and  
25 demand.

26 (3) When a defendant timely files an objection and demand for an analyst's presence  
27 at trial in the manner specified in paragraph 2, the certificate of analysis shall not serve as prima  
28 facie evidence unless the analyst who signed the certificate testifies for the Commonwealth or  
29 the defendant waives his right to confront the analyst.

30 (4) A defendant who fails to timely file an objection and demand for an analyst's  
31 presence at trial in the manner specified in paragraph 2 shall forfeit the right to demand that the  
32 Commonwealth present an analyst's testimony at trial and the certificate of analysis shall be  
33 admissible as prima facie evidence, without requiring the Commonwealth to present live  
34 testimony from an analyst.

35 (b) Continuances or other delays in the case occasioned by the demand for an analyst's  
36 presence at trial shall be excluded in computing the time within which the trial of any offense  
37 must commence under Rule 36 of the Massachusetts Rules of Criminal Procedure, and, absent  
38 bad faith by the Commonwealth, shall not constitute grounds for dismissal for want of  
39 prosecution.

40 (c) Nothing contained in this section shall require the Commonwealth to introduce a  
41 certificate of analysis at trial or limit the Commonwealth's ability to prove matters that may be  
42 contained in a certificate of analysis by any other method of competent proof.

43 (d) The notice and demand requirements of this section shall not apply to pretrial or other  
44 hearings in criminal cases, or to proceedings other than criminal, delinquency or youthful  
45 offender trials. In proceedings other than criminal trials, certificates of analysis may be admitted  
46 into evidence as otherwise permitted by law.

47 SECTION 2. This act shall apply to all criminal cases pending on or commenced after  
48 the effective date. For cases pending on the effective date that have advanced beyond the pretrial  
49 hearing scheduled under Rule 11 of the Massachusetts Rules of Criminal Procedure, the  
50 Commonwealth may file and serve the notice specified in paragraph (a)(1) of section 6B of  
51 chapter 278 within 30 days of the effective date, or at a later date by leave of the court for good  
52 cause shown, the defendant may file and serve the objection and demand specified in paragraph  
53 (a)(2) within 30 days of the Commonwealth's service of such notice, or at a later date by leave of  
54 the court for good cause shown, and the trial shall be held no earlier than 45 days after the  
55 defendant's service of such objection and demand.