

# HOUSE . . . . . No. 4162

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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### 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           Section 6B. (a) A certificate of analysis prepared under sections 39 or 41 of chapter  
4 22C, section 24(1)(e) of chapter 90, section 13 of chapter 111, section 36 of chapter 138 or  
5 section 121A of chapter 140 shall be admissible in a criminal, delinquency or youthful offender  
6 trial as prima facie evidence of the matters specified in those sections without requiring live  
7 testimony subject to the following procedures:

8           (1)    The Commonwealth, through the attorney general or district attorney, shall file  
9 with the clerk of the court in which the case is pending a notice of intent to rely on a certificate  
10 of analysis without the testimony of the analyst. The notice, which may be included in the  
11 conference report required by Rule 11 of the Massachusetts Rules of Criminal Procedure, shall  
12 identify the type of certificate that will be offered at trial, shall be filed and served prior to the  
13 pretrial hearing scheduled pursuant to said Rule 11, or at a later date by leave of the court for

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

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

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

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

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

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

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

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