

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1403
Committee Substitute Favorable 6/1/10

Short Title: Collect DNA Sample on Arrest.

(Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING CERTAIN OFFENSES, TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION, TO ESTABLISH THE MISSING PERSONS DNA IDENTIFICATION SYSTEM AS PART OF THE STATE'S CURRENT DNA DATABASE AND DNA DATABANK, AND TO PROVIDE FUNDING FOR THE DNA DATABASE AND DATABANK.

Whereas, DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions, and in detecting recidivist acts; and

Whereas, it is the policy of this State to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons; and

Whereas, it is in the best interests of the citizens of this State to establish a statewide DNA database containing DNA samples submitted by persons arrested for certain criminal offenses; and

Whereas, a statewide DNA database that includes DNA records and samples necessary for the identification of missing persons and unidentified human remains, including DNA samples voluntarily contributed by relatives of missing persons, will assist in bringing closure to families who have family members missing and may also be an important tool in criminal investigations; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The DNA Database Act of 2010."

SECTION 2. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

§ 15A-266.3A.

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that sample has not been expunged pursuant to any provision of law, a DNA sample shall be obtained from any person who is arrested for committing an offense described in subsection (d) or (e) of this section for DNA analysis and testing.

(b) The State shall obtain a DNA sample from an arrested person at the time of arrest, or when fingerprinted pursuant to the booking procedure, which DNA sample shall be forwarded to the appropriate laboratory for DNA analysis and testing.



- 1 (1) The DNA sample taken from the arrested person shall be by cheek swab or
2 by any other method than by a blood sample, unless a court order authorizes
3 that a DNA blood sample be obtained.
- 4 (2) If a DNA blood sample is taken, it shall comply with the requirements of
5 G.S. 15A-266.6(b).
- 6 (3) If the person is arrested without a warrant, then the DNA sample shall not be
7 taken until a determination has been made, pursuant to G.S. 15A-511(c)(1),
8 that there is probable cause to believe that a crime has been committed and
9 that the person arrested committed it.
- 10 (c) The DNA record of identification characteristics resulting from the DNA testing and
11 the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank
12 pursuant to this Article.
- 13 (d) This section shall apply to a person arrested for violating any one of the following
14 offenses in Chapter 14 of the General Statutes:
- 15 (1) G.S. 14-17. First and Second Degree Murder.
- 16 (2) G.S. 14-18. Manslaughter.
- 17 (3) Any offense in Article 7A, Rape and Other Sex Offenses.
- 18 (4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1,
19 Assault on a Handicapped Person.
- 20 (5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A,
21 Human Trafficking.
- 22 (6) Any offense in Article 14, Burglary.
- 23 (7) Any offense in Article 15, Arson.
- 24 (8) Any offense in Article 17, Robbery.
- 25 (9) Any offense which would require the person to register under the provisions
26 of Article 27A of Chapter 14 of the General Statutes, Sex Offender and
27 Public Protection Registration Programs.
- 28 (10) G.S. 14-196.3, Cyberstalking.
- 29 (11) G.S. 14-277.3A, Stalking.
- 30 (e) This section shall also apply to a person arrested for attempting, solicitation of
31 another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the
32 violations included in subsection (d) of this section.
- 33 (f) The State Bureau of Investigation shall remove a person's DNA record, and destroy
34 any DNA biological samples that may have been retained, from the State DNA Database and
35 DNA Databank if all of the following conditions are met:
- 36 (1) The defendant or the defendant's counsel has provided the State with a
37 signed form, promulgated by the Administrative Office of the Courts,
38 requesting that the defendant's DNA record be expunged from the DNA
39 Database and that any biological samples in the DNA Databank be
40 destroyed.
- 41 (2) As to the charge, or all charges, upon which a DNA sample is required under
42 this section, a court or the State has taken action resulting in any one of the
43 following:
- 44 a. The charge has been dismissed.
- 45 b. The person has been acquitted of the charge.
- 46 c. No charge was filed within the applicable time period.
- 47 (3) The SBI has determined that the person's DNA record is not required to be in
48 the State DNA Database under some other provision of law, or is not
49 required to be in the State DNA Database based upon an offense from a
50 different transaction or occurrence from the one which was the basis for the
51 person's arrest.

1 (4) The SBI is provided with a form, promulgated by the Administrative Office
2 of the Courts, which verifies that the requirements of subdivision (2) of this
3 subsection have been met. The State shall (i) determine whether a
4 circumstance under subdivision (2) of this subsection exists, and if so, (ii)
5 provide the verification form for signature by a judge or the District
6 Attorney, and (iii) transmit the verification form to the SBI. If a
7 circumstance under subdivision (2) of this section qualifies the defendant's
8 DNA record and sample for expunction, then the State shall transmit the
9 completed verification form to the SBI no later than 30 days following the
10 receipt of the request form described in subdivision (1) of this subsection.

11 If the State determines that the defendant does not qualify for expunction under this section,
12 then it shall notify the defendant with 30 days of the receipt of the request form. The defendant
13 may file a motion with the court to review the State's denial of the defendant's request or its
14 failure to act within the prescribed time period.

15 (g) Notwithstanding subsection (f) of this section, the SBI is not required to destroy or
16 remove an item of physical evidence obtained from a sample if evidence relating to another
17 person would thereby be destroyed.

18 (h) Any identification, warrant, probable cause to arrest, or arrest based upon a database
19 match is not invalidated due to a failure to expunge or a delay in expunging records.

20 (i) A letter documenting expunction of the DNA record and destruction of the DNA
21 sample shall be sent by the SBI to the person who provided the DNA sample at the address
22 specified in the verification form no later than 30 business days following its receipt of the
23 form.

24 (j) The SBI shall adopt procedures to comply with this section.

25 (k) A DNA record and sample shall not be expunged under this section if the defendant
26 is either found guilty of, or pleads guilty or nolo contendere to, a lesser-included offense of the
27 charge upon which the DNA sample was based. A DNA record and sample shall be expunged
28 under this section if the defendant is either found guilty of, or pleads guilty or nolo contendere
29 to, a misdemeanor not included in subsection (d) or (e) of this section. Nothing in this Article
30 shall be construed as prohibiting either the collection of a DNA sample or the retention of a
31 DNA record or sample in the State DNA Database and DNA Databank as a condition of a plea
32 bargain."

33 **SECTION 3.** G.S. 15A-266.2(4) reads as rewritten:

34 "(4) "DNA Sample" in this Article means a blood, buecal, or any other sample
35 sample of blood, saliva, hair, body tissue, or biological material that is
36 appropriate for DNA testing or analysis and that is submitted to the SBI
37 Laboratory pursuant to this Article, provided by any person convicted of
38 offenses covered by this Article or submitted to the SBI Laboratory for
39 analysis pursuant to a criminal investigation."

40 **SECTION 4.** G.S. 15A-266.4(a) reads as rewritten:

41 "(a) Unless a DNA sample has previously been obtained by lawful process and a record
42 stored in the State DNA Database, and that sample has record and sample have not
43 been expunged pursuant to G.S. 15A-148, on or after December 1, 2003, a person
44 any provision of law, a person:

45 (1) who-Who is convicted of any of the crimes listed in subsection (b) of this
46 section or who is found not guilty of any of these crimes by reason of
47 insanity and committed to a mental health facility in accordance with
48 G.S. 15A-1321-G.S. 15A-1321, shall have-provide a DNA sample drawn
49 upon intake to jail, prison, or the mental health facility. In addition, every
50 person convicted on or after December 1, 2003, of any of these crimes, but

1 who is not sentenced to a term of confinement, shall provide a DNA sample
2 as a condition of the sentence.

3 (2) ~~A person who~~ Who has been convicted and incarcerated as a result of a
4 conviction of one or more of ~~these crimes prior to December 1, 2003, the~~
5 crimes listed in subsection (b) of this section, or who was found not guilty of
6 any of these crimes by reason of insanity and committed to a mental health
7 facility in accordance with G.S. 15A-1321, ~~G.S. 15A-1321 before December~~
8 1, 2003, shall ~~have~~ provide a DNA sample ~~drawn~~ before parole or release
9 from the penal system or before release from the mental health facility. ~~This~~
10 subdivision is retroactive and applies to (i) any person convicted of any of
11 these offenses, regardless of the date of the conviction, or (ii) any person
12 acquitted of any of these offenses by reason of insanity.

13 (b) Crimes covered by this Article include all of the following:

14 (1) All felonies.

15 (2) ~~G.S. 14-32.1—Assaults on handicapped persons.~~

16 (3) ~~G.S. 14-277.3A or former~~ Former G.S. 14-277.3 – Stalking.

17 (4) ~~G.S. 14-27.5A—Sexual battery.~~

18 (5) All offenses described in G.S. 15A-266.3A."

19 **SECTION 5.** G.S. 15A-266.5 reads as rewritten:

20 **"§ 15A-266.5. Tests to be performed on ~~blood sample~~ DNA sample.**

21 (a) The tests to be performed on each ~~blood~~ DNA sample are:

22 (1) To analyze and type the genetic markers contained in or derived from the
23 DNA.

24 (2) For law enforcement identification purposes.

25 (3) For research and administrative purposes, including:

26 a. Development of a population database when personal identifying
27 information is removed.

28 b. To support identification research and protocol development of
29 forensic DNA analysis methods.

30 c. For quality control purposes.

31 d. To assist in the recovery or identification of human remains from
32 mass disasters or for other humanitarian purposes, including
33 identification of missing persons.

34 (b) The DNA record of identification characteristics resulting from the DNA testing
35 shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself
36 will be stored and maintained by the SBI in the State DNA Databank.

37 (c) The SBI shall report on the DNA testing and analysis provided under this Article to
38 the Joint Legislative Commission on Governmental Operations annually, no later than February
39 1."

40 **SECTION 6.** G.S. 15A-266.6 reads as rewritten:

41 **"§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ DNA analysis.**

42 (a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from
43 persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA
44 samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained
45 immediately following sentencing. The sentencing court shall order any person not sentenced
46 to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample
47 pursuant to any provision of law requiring a sample and whose DNA record and sample have
48 not been expunged pursuant to law, to report immediately following sentencing to the location
49 designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform
50 the court of the date, time, and location at which the sample shall be taken, and the court shall
51 enter that date, time, and location into its order. A copy of the court order indicating the date,

1 time, and location the person is to appear to have a sample taken shall be given to the sheriff. If
2 a person not sentenced to a term of confinement fails to appear immediately following
3 sentencing or at the date, time, and location designated in the court order, the sheriff shall
4 inform the court of the failure to appear and the court may issue an order to show cause
5 pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The
6 defendant shall continue to be subject to the court's order to provide a DNA sample until such
7 time as his or her DNA sample is analyzed and a record is successfully entered into the State
8 DNA Database.

9 (b) If, for any reason, the defendant provides a DNA blood sample instead of by some
10 other method, ~~Only~~ only a correctional health nurse technician, physician, registered
11 professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health
12 care worker with phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted
13 for analysis. No civil liability shall attach to any person authorized to draw blood by this
14 section as a result of drawing blood from any person if the blood was drawn according to
15 recognized medical procedures. No person shall be relieved from liability for negligence in ~~the~~
16 drawing-obtaining of any a DNA sample, sample by any method.

17 (c) The SBI shall provide to the sheriff the materials and supplies necessary to ~~draw~~
18 obtain a DNA sample from a person not sentenced to a term of confinement. Any DNA sample
19 drawn from a person not sentenced to a term of confinement shall be taken using the materials
20 and supplies provided by the SBI."

21 **SECTION 7.** G.S. 15A-266.7 reads as rewritten:

22 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

23 ~~The SBI shall adopt rules governing the procedures to be used in the submission,~~
24 ~~identification, analysis, and storage of DNA samples and typing results of DNA samples~~
25 ~~submitted under this Article. The DNA sample shall be securely stored in the State Databank.~~
26 ~~The typing results shall be securely stored in the State Database. These procedures shall also~~
27 ~~include quality assurance guidelines to insure that DNA identification records meet standards~~
28 ~~and audit standards for laboratories which submit DNA records to the State Database. Records~~
29 ~~of testing shall be retained on file at the SBI.~~

30 (a) The SBI shall:

31 (1) Adopt rules governing the procedures to be used in the submission,
32 identification, analysis, and storage of DNA samples and typing results of
33 DNA samples submitted under this Article. These procedures shall also
34 include quality assurance guidelines to insure that DNA identification
35 records meet audit standards for laboratories which submit DNA records to
36 the State DNA Database.

37 (2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and
38 DNA Databasing Laboratories that meet or exceed the quality assurance
39 guidelines established for such laboratories by the CODIS unit of the Federal
40 Bureau of Investigation.

41 (b) DNA samples shall be securely stored in the State DNA Databank. The typing
42 results shall be securely stored in the State DNA Database.

43 (c) Records of testing shall be retained on file at the SBI."

44 **SECTION 8.** G.S. 15A-266.8 reads as rewritten:

45 "**§ 15A-266.8. DNA database exchange.**

46 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to
47 contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines
48 as established by the SBI, classify, and file the DNA record of identification characteristic
49 profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such
50 information available as provided in this section. The SBI may contract out DNA typing
51 analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The

1 results of the DNA profile of individuals in the State Database shall be made available to local,
2 State, or federal law enforcement agencies, approved crime laboratories which serve these
3 agencies, or the district attorney's office upon written or electronic request and in furtherance of
4 an official investigation of a criminal offense. These records shall also be available upon
5 receipt of a valid court order directing the SBI to release these results to appropriate parties not
6 listed above, when the court order is signed by a superior court judge after a hearing. The SBI
7 shall maintain a file of such court orders.

8 (b) The SBI shall adopt rules governing the methods of obtaining information from the
9 State Database and CODIS and procedures for verification of the identity and authority of the
10 requester.

11 (c) The SBI shall create a separate population database comprised of ~~blood~~-DNA
12 samples obtained under this Article, after all personal identification is removed. Nothing shall
13 prohibit the SBI from sharing or disseminating population databases with other law
14 enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems
15 necessary to assist the SBI with statistical analysis of the SBI's population databases. The
16 population database may be made available to and searched by other agencies participating in
17 the CODIS system."

18 **SECTION 9.** Article 23 of Chapter 15A of the General Statutes is amended by
19 adding a new section to read:

20 "**§ 15A-502A. DNA sample upon arrest.**

21 A DNA sample shall be obtained from any person arrested for an offense designated under
22 G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of
23 the General Statutes."

24 **SECTION 10.** G.S. 15A-1382 reads as rewritten:

25 "**§ 15A-1382. Reports of disposition; fingerprints and DNA samples.**

26 (a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the
27 disposition of the case, a report of the disposition of the charges shall be made to the State
28 Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days
29 following disposition.

30 (b) When a defendant is found guilty of any felony, regardless of the class of felony, a
31 report of the disposition of the charges shall be made to the State Bureau of Investigation on a
32 form supplied by the State Bureau of Investigation within 60 days following disposition. If a
33 convicted felon was not fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the
34 case, his fingerprints shall be taken and submitted to the State Bureau of Investigation along
35 with the report of the disposition of the charges on forms supplied by the State Bureau of
36 Investigation.

37 (c) When a defendant has provided a DNA sample pursuant to G.S. 15A-502A and
38 G.S. 15A-266.3A, a determination shall be made whether the disposition of the charges
39 requires that a verification form be completed and transmitted to the SBI, pursuant to
40 G.S. 15A-266.3A(f)."

41 **SECTION 11.** G.S. 7B-2201 reads as rewritten:

42 "**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

43 (a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile
44 shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of
45 Investigation.

46 (b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample
47 shall be taken from the juvenile if the offenses are included in the provisions of
48 G.S. 15A-266.3A."

49 **SECTION 12.** Article 13 of Chapter 15A of the General Statutes is amended by
50 adding a new section to read:

51 "**§ 15A-270.15. Missing persons DNA identification system.**

1 (a) The SBI shall establish and administer a missing persons DNA identification system
2 as part of the State DNA Database and the State DNA Databank. The purpose of the missing
3 persons DNA identification system is to facilitate the use of DNA records by law enforcement
4 agencies and the Chief Medical Examiner in the identification and location of missing and
5 unidentified persons or human remains. The DNA missing persons identification system shall
6 consist of all of the following DNA indexes:

7 (1) Unidentified persons.

8 (2) Unidentified human remains.

9 (3) Relatives of, or known reference samples from, missing persons.

10 (b) Samples from unidentified persons or relatives of a missing person shall be provided
11 to the SBI as follows:

12 (1) Upon the completion of a permission to search form supplied by the SBI that
13 authorizes the collection of a DNA sample.

14 (2) Upon the receipt of a properly executed search warrant.

15 (3) Upon the issuance of a court order.

16 (c) Samples from unidentified human remains shall be provided by the Chief Medical
17 Examiner.

18 (d) Samples of known reference materials from missing persons shall be provided by
19 the investigating law enforcement agency.

20 (e) Searches of samples collected pursuant to this section may be made against DNA
21 indexes consisting of any of the following, but shall not be performed against DNA indexes
22 consisting of evidentiary samples resulting from criminal investigations:

23 (1) Unidentified persons.

24 (2) Unidentified human remains.

25 (3) Relatives of, or known reference samples from, missing persons.

26 (4) Persons required to provide a DNA sample under G.S. 15A-266.3A.

27 (5) Persons required to provide a DNA sample under G.S. 15A-266.4.

28 (f) The SBI may contract or associate with any State agency or private entity that meets
29 guidelines established by the SBI to fulfill any part of its responsibilities under this section."

30 **SECTION 13.** G.S. 7A-304(a) reads as rewritten:

31 "(a) In every criminal case in the superior or district court, wherein the defendant is
32 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the
33 prosecuting witness, the following costs shall be assessed and collected, except that when the
34 judgment imposes an active prison sentence, costs shall be assessed and collected only when
35 the judgment specifically so provides, and that no costs may be assessed when a case is
36 dismissed.

37 ...

38 (9) For the support and services of the State Bureau of Investigation DNA
39 Database and DNA Databank, the sum of three dollars (\$3.00), to be
40 remitted to the State Treasurer."

41 **SECTION 14.** Section 13 of this act becomes effective July 1, 2010, and applies to
42 fees assessed or collected on or after that date. The remainder of this act becomes effective
43 October 1, 2010.