

April 7, 2009

H 1190. PRESERVATION OF DNA & BIOLOGICAL EVIDENCE. Filed 4/7/09. *TO CLARIFY AND STRENGTHEN THE LAW REGARDING THE PRESERVATION OF DNA AND BIOLOGICAL EVIDENCE THAT IS RELATED TO A CRIMINAL OFFENSE AND A DEFENDANT'S ACCESS TO THAT EVIDENCE.*

Amends GS 15A-266 *et seq.*, which govern the collection, testing, and preservation of DNA evidence in criminal investigations. Among the more significant changes are (1) providing that a court "shall," rather than "may," order pretrial DNA testing at the defendant's request upon a sufficient showing; (2) expanding the definition of *biological evidence* to include fingerprints, while simultaneously limiting the definition to material that may reasonably be used to incriminate or exculpate a person; (3) clarifying the responsibilities of the clerk of court in preserving biological evidence that has been introduced at trial; (4) requiring the State Bureau of Investigation to promulgate guidelines regarding the retention and preservation of biological evidence and publish the guidelines by January 1, 2010; (5) providing for, but limiting, a defendant's right to waive the preservation of biological evidence; (6) altering the time periods for which biological evidence must be kept after a conviction, and providing for the preservation and retention of biological evidence collected in connection with unsolved homicide and rape investigations; (7) making it a Class H felony to tamper intentionally with DNA evidence, and a Class F felony to do so if the evidence is for a crime of first-degree murder; and (8) in connection with post-conviction DNA testing under GS 15A-269, requiring that the defendant be given input into which facility undertakes the testing.

Effective December 1, 2009, for offenses committed on or after that date.

Intro. by Glazier.

GS 15A

April 23, 2009

H 1190. PRESERVATION OF DNA & BIOLOGICAL EVIDENCE. Filed 4/7/09. House committee substitute makes the following changes to 1st edition. Provides in proposed amended GS 15A-267(c) that the court is required, upon defendant's motion prior to trial, to order the State Bureau of Investigation (SBI) or any approved vendor that meets SBI contracting standards [was, another laboratory accredited by the American Society of Criminal Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) in the previous edition] to perform DNA (deoxyribonucleic acid) testing and, if the data meets National DNA Index System (NDIS) criteria, order the SBI to search and/or upload to CODIS (Combined DNA Index System) any profiles obtained from testing (was, order DNA Database comparisons of any biological material collected with the case in which the defendant is charged) upon showing of specific facts.

Amends proposed amended GS 15A-268 to require that the court specifically find that evidence, upon a party's assertion, may have biological evidentiary value in order for the court to instruct that (1) the evidence be designated as such in the court's records and (2) the evidence be preserved pursuant to the statute's requirements. Deletes that the right to preservation of biological evidence and the right to DNA testing of that evidence cannot be waived, except in the case when a defendant knowingly and voluntarily waives the right in a court proceeding. Provides that the court order allowing the disposition of evidence must require *the custodial agency to return such evidence to the collecting agency*. Requires the collecting agency to take reasonable measures to remove or preserve portions of evidence related to the offense through cuttings, swabs, or other means consistent with SBI minimum guidelines (was, means consistent with the best scientific methods available at the time) in a quantity sufficient to permit DNA testing before returning or disposing of the evidence (was, the custodial agency must be required in the court order to take such reasonable measures). If an entity asked to produce preserved evidence cannot locate that evidence and the evidence was destroyed, the court may (was, must) conduct a hearing to determine whether obstruction of justice and contempt proceedings are in order. Clarifies that all records documenting the possession, control, storage, and destruction of evidence *related to a criminal investigation or prosecution of an offense referenced in subdivision (1), (1a), (1b), or (5) of subsection (a6) of this section* must be retained. Makes it a (1) Class I felony (was, Class H felony) in connection with a noncapital crime and (2) Class H felony (was, Class F felony) in connection with a crime of first degree murder for a person to knowingly and

intentionally destroy, alter, conceal, or tamper with evidence that is required to be preserved with the intent to impair the integrity of that evidence, prevent that evidence from being subjected to DNA testing, or prevent production or use of that evidence in an official proceeding. Makes technical changes. Also makes conforming changes to proposed GS 15A-268(a6)(6).

Adds to GS 15A-269 that a defendant may make a motion before the trial court that entered the judgment of conviction against the defendant for performance of DNA testing and, if the testing complies with FBI requirements, *and the data meets NDIS criteria*, profiles obtained from the testing must be searched and/or uploaded to CODIS if the biological evidence meets specified conditions. Requires that, upon certain determinations by the court, the court grant the motion for DNA testing and, if testing complies with FBI requirements, the run of any profiles (was, uploading to CODIS) obtained from testing. Provides that, if the court orders DNA testing, such testing must be conducted by an SBI-approved testing facility (was, conducted by an ACLAD/LAB accredited facility) mutually agreed upon by the petitioner and the State and approved by the court. Makes technical changes.

Effective when the act becomes law, establishes a 13 member Joint Select Study Committee on the Preservation of a Biological Evidence (Committee). Provides for the composition of the Committee, including three members each appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, member compensation, payment of expenses, and assignment of staff. Provides that the Committee must review matters related to the preservation of DNA and biological evidence, including (1) the costs associated with the promulgation of minimum guidelines for the retention and preservation of biological evidence, (2) emerging technologies with regard to the retention and preservation of biological evidence, (3) procedures for the interagency transfer of biological evidence, and (4) any other topic the Committee believes is related to its purpose. Requires the Committee to submit a final report to the General Assembly by April 1, 2010, with a copy filed with the President Pro Tem.'s office, the Speaker's office, and the Legislative Library. Terminates the Committee on April 1, 2010, or upon the filing of its final report, whichever occurs first.

May 7, 2009

H 1190. PRESERVATION OF DNA & BIOLOGICAL EVIDENCE. Filed 4/7/09. House committee substitute makes the following changes to 2nd edition. Adds new subsection GS 15A-266.2(5a) which defines NDIS as the National DNA Index System that is the system of DNA profile records which meet federal standards. Expands the composition of the Joint Select Study Committee on the Preservation of Biological Evidence to include two state district attorneys with one appointed by the Speaker of the House of Representatives and one appointed by the President Pro Tem. Deletes language stating that Sections 1 through 6 of the act apply to offenses committed on or after December 1, 2009, while retaining December 1, 2009 as the effective date. Makes stylistic, technical and conforming changes.

June 8, 2009

H 1190. PRESERVATION OF DNA & BIOLOGICAL EVIDENCE. Filed 4/7/09. Senate committee substitute makes the following changes to 3rd edition. Amends GS 15A-266.2 to clarify that *custodial agency* includes a central evidence storage facility operated by a state agency. Expands the membership of the proposed Joint Select Study Committee on the Preservation of Biological Evidence to include one public member appointed by the President Pro Tempore of the Senate and one public member appointed by the Speaker of the House of Representatives.

June 29, 2009

SL 2009-203 (H 1190). PRESERVATION OF DNA AND BIOLOGICAL EVIDENCE. AN ACT TO CLARIFY AND STRENGTHEN THE LAW REGARDING THE PRESERVATION OF DNA AND BIOLOGICAL EVIDENCE THAT IS RELATED TO A CRIMINAL OFFENSE AND A DEFENDANT'S ACCESS TO THAT EVIDENCE. Summarized in *Daily Bulletin* 4/7/09, 4/23/09, 5/7/09, and 6/8/09. Enacted June 26, 2009. Section 7 is effective June 26, 2009. The remainder is effective December 1, 2009.

