

April 9, 2009

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. *TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING A FELONY AND TO ESTABLISH THE MISSING PERSONS DNA IDENTIFICATION SYSTEM AS PART OF THE STATE'S CURRENT DNA DATABASE AND DNA DATABANK.*

Adds new GS 15A-502A providing that, unless a DNA sample has previously been obtained by lawful process and stored in the state DNA database and has not been expunged pursuant to GS 15A-148, any person who is arrested on or after December 1, 2009 for committing a felony must provide his or her DNA sample for DNA analysis and testing. The DNA sample must be taken by a qualified member of the health profession. If the arrestee objects to having a DNA blood sample taken, a sample of saliva, hair, body tissues, or other biological material that is appropriate for DNA testing may be taken unless otherwise provided by court order. Unreasonable or unnecessary force may not be used to obtain a DNA sample. Results of the DNA testing and the DNA sample itself will be stored and maintained in the state DNA databank. Makes additional technical and conforming amendments to other statutes regarding criminal procedure. Adds new GS 15A-270.15 requiring the State Bureau of Investigation to establish and administer a missing persons DNA identification system as part of the state DNA database and the state DNA databank. The system will consist of DNA indexes of unidentified persons, unidentified human remains, and relatives of, or known reference samples from, missing persons. Creates the DNA Identification System Fund in the Department of Justice to assist with the cost of maintaining the DNA databank. Requires that a person convicted of a felony, of sexual battery, of stalking, or of assault on a handicapped person will be assessed a fee of \$100, which will be deposited in this fund. Effective December 1, 2009 and applies to arrests on or after that date.

Intro. by Neumann.

GS 7B, 15A

June 1, 2010

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. House committee substitute makes the following changes to 1st edition.

Reorganizes the provisions of the proposed "The DNA Database Act of 2010" under Article 13 of GS Chapter 15A.

Deletes provisions of proposed new section GS 15A-502A regarding DNA sample and replaces it with a provision requiring that a DNA sample be obtained from any person arrested for an offense under proposed GS 15A-266.3A.

Enacts new GS 15A-266.3A to require that a DNA sample be obtained for analysis and testing from any person who is arrested for violating certain offenses in GS Chapter 14 (was, arrested for a felony) as specified in subsections (d) and (e) of proposed GS 15A-266.3A, unless a previous DNA sample has been obtained by lawful process, stored in the state DNA database, and the sample has not been expunged under a provision of law. Provides that the DNA sample is to be obtained at the time of arrest or when the accused is fingerprinted and forwarded to the appropriate DNA lab for analysis and testing. Specifies conditions under which the State Bureau of Investigation is to expunge a person's DNA record, destroying any biological DNA samples from the state DNA database and DNA databank. Provides an exception to the destroying or removing of physical evidence when doing so would destroy or remove an item of physical evidence relating to another person. Prohibits expunging a DNA sample and record under proposed GS 15A-266.3A if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a lesser included offense of the charge upon which the DNA sample was based.

Amends GS 15A-266.2(4) to clarify that *DNA Sample* means a sample of blood, saliva, hair, body tissue, of/or biological material. Amends GS 15A-266.4(a) to require that a DNA sample be obtained from (1) any person convicted of a crime listed in GS 15A-266.4(b), (2) a person found not guilty of the crimes in subsection (b) by reason of insanity and committed to a mental health facility in accordance with GS 15A-1321, and (3) a person convicted of the offenses under subsection (b) who is not sentenced to a period of confinement as a condition of the sentence or parole or release. Makes these provisions retroactive.

Amends GS 15A-266.5 to require the SBI to report annually, no later than February 1, on the DNA testing and analysis to the Joint Legislative Commission on Governmental Operations.

Amends GS 15A-266.6 to clarify the procedures for DNA analysis (was, procedures for withdrawal of blood sample for DNA analysis). Provides that only a correctional health nurse technician, physician, registered or licensed practical nurse, or other health care worker may draw a DNA blood sample.

Amends GS 15A-266.7 to direct the SBI to adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of the DNA samples. Provides guidelines regarding secure storage of samples and retaining records of testing.

Amends GS 15A-1382 to apply to reports of disposition involving fingerprints *and* DNA samples. Deletes requirement that a report on the disposition of the charges be made in 60 days. Amends GS 7B-2201 to provide for obtaining DNA samples from a juvenile who is transferred to the superior court if the juvenile's offenses are included in the provisions of proposed GS 15A-266.3A. Amends proposed GS 15A-270.15 to authorize the SBI to contract or associate with any state agency or private entity that meets SBI guidelines to fulfill its responsibilities in administering and establishing a missing persons DNA identification system.

Deletes proposed GS 15A-270.16, which created the DNA Identification System Fund. Instead, effective July 1, 2010, amends GS 7A-304(a) to include a \$3 cost to be assessed and collected in criminal cases in the superior or district court for the support and services of the SBI DNA Database and DNA Databank.

Makes additional conforming and technical changes. Makes conforming changes to the title. Except as otherwise indicated, effective October 1, 2010.

July 1, 2010

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. House committee substitute makes the following changes to 2nd edition.

Amends GS 15A-266.3A to delete the following offenses from those for which upon arrest for committing the offense, a DNA sample must be obtained: (1) any offense punishable as a felony in Article 8, Assaults; and GS 14-32.1, Assault on a Handicapped Person; (2) any offense in Article 15, Arson; and (3) any offense in Article 17, Robbery.

Deletes as a condition of expunction the provision requiring the defendant's attorney to initiate the expunction procedure. Requires the State to initiate the DNA record expunction process if the charge is dismissed, the person is acquitted, or no charges are filed within the applicable time period. Provides that if the dismissal is in writing, the district attorney (DA) should indicate on the form used for the dismissal whether the defendant had provided a DNA sample; if the dismissal is in open court, requires the DA to indicate whether the defendant had provided a DNA sample. Also directs the DA, upon the defendant's acquittal, to indicate in open court whether the defendant had provided a DNA sample and directs the clerk to include that information in the case file. Provides that after the State has verified certain requirements, the State must submit a form to the SBI that is signed by a judge or DA and indicates that the requirements have been met. Makes conforming changes to GS 15A-931(a) (voluntary dismissal of criminal charges by the state).

Requires the State to notify the defendant no later than 30 days from the qualifying circumstances that initiate the expunction consideration process as to whether or not the defendant's DNA record and sample qualifies for expunction. Permits the defendant to seek judicial review of any determination by the State that the DNA record or sample do not meet the criteria for expunction. Clarifies that the SBI must act to remove a person's DNA record and destroy any biological samples and mail notice of the expunction to the person who provided the DNA sample within 30 days of the receipt of the verification form.

Provides that if the State or the SBI cannot meet the processing time for expunction, then the SBI or the State is to seek a judicial order granting additional time to complete the DNA expunction. Also provides that the court is to determine whether any database matches to the defendant's DNA sample occurring after the expiration of any expunction deadlines invalidates any identification, warrant, probable cause to arrest, or arrest based on a database match.

Amends GS 15A-266.5 to direct the SBI to report annually to the Joint Legislative Commission on Governmental Operations *and* to the Joint Legislative Corrections, Crime Control

and Juvenile Justice Oversight Committee on or before February 1. Specifies what information must be contained in the report.

Effective October 1, 2010 (was, July 1, 2010), amends GS 7A-304(a) to designate the additional court cost for the support and services of the SBI DNA Database and Databank as a *tax* (was, a fee). Reduces the court cost to \$2 (was, \$3). Provides that the tax does not apply to infractions. Applies to taxes assessed or collected on or after the effective date, but includes an exception regarding certain misdemeanor cases disposed of on or after that date.

Deletes the provision that would have created a separate DNA index for missing person identification purposes. Makes a conforming deletion in the title.

Makes the effective date of the act December 1, 2010 (was, October 1, 2010) except as otherwise indicated.

July 6, 2010

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. House amendment makes the following changes to 3rd edition.

Adds new section providing that any additional costs needed for the act's implementation, not specifically provided for by the act, will be funded by Department of Justice (DOJ) appropriations. Further directs DOJ to pursue and apply for supplementary funds as needed.

July 7, 2010

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. House amendment makes the following changes to 3rd edition, as amended. Amends proposed GS 15A-266.3A by limiting the instances in which a person arrested for violating provisions in Article 14 must submit a DNA sample to arrests for violations of GS 14-51 (first and second degree burglary), GS 14-53 (breaking out of dwelling house burglary), GS 14-54.1 (breaking or entering a place of worship) and GS 14-57 (burglary with explosives) (the previous edition applied to arrests for any burglary offense). Further amends the statute to limit the amount of time by which the court may extend the statutory periods for expunction when the State or SBI are unable to meet the required processing times to no more than 30 days.

July 8, 2010

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. Senate committee substitute makes the following changes to 4th edition.

Definitions. Amends the following definitions in GS 15A-266.2: *DNA sample* means blood, cheek swabs, or any biological sample containing cells provided by any person with respect to offenses covered by Article 13 in GS Chapter 15A or submitted to the State Bureau of Investigation (SBI) for analysis pursuant to a criminal investigation or storage or both (was in the 4th editio a sample of blood, saliva, hair, body tissue, or biological material that is appropriate for DNA testing or analysis and that is submitted to SBI). Extends the definition of *State DNA database* to provide that the SBI's DNA database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to: forensic casework; convicted offenders and arrestees required to provide a DNA sample under the Article; persons required to register as sex offenders; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies (list added). Adds the definition for *criminal justice agency* to mean an agency or institution of a federal, state, or local government, other than the office of the public defender, that performs as part of its principal function activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders. Adds definitions for *arrestee* as any person arrested for an offense in proposed GS 15A-266.3A(d) or (e), and for *conviction* as a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect. Makes technical and clarifying changes to the definitions for *CODIS*, *custodial agency*, *DNA record*, *NDIS*, and *SBI*.

Establishment of DNA database and databank. Adds a section amending GS 15A-266.3 to establish the DNA database and DNA databank, under the administration of the SBI. Requires the SBI to provide DNA records to the FBI to search DNA records nationwide, and storage and maintenance by CODIS. Provides that the databank will serve as the repository for DNA samples obtained under the Article, and makes the database compatible with specified FBI procedures. Directs the database to store and maintain DNA records related to listed issues including crime scene evidence, arrestees, registered sex offenders, unidentified persons, missing persons and their relatives, and anonymous DNA profiles. Current statutory language, requiring compatibility between the DNA identification system and FBI procedures, is deleted. Makes a conforming change to the catchline.

Removes section amending GS 15A-931(a) (voluntary dismissal of criminal charges by the state), which detailed part of the administrative procedure for expunction of a person's DNA sample upon dismissal.

DNA Samples upon arrest. Makes several changes to proposed GS 15A-266.3A: *DNA sample required for DNA analysis upon arrest for certain offenses* (was, DNA upon arrest). Amends proposed GS 15A-266.3A(b) to direct the arresting law enforcement officer (was, the state) to obtain or cause to be obtained, a DNA sample at the time of arrest, or when fingerprinted. Further directs the arresting officer to forward, or cause to be forwarded, the DNA sample to the appropriate laboratory for DNA analysis and testing. Adds new subsection (b1) to require a person taking a DNA sample from an arrested person, pursuant to the section, to provide the arrested person with a written notice, supplied by the Department of Justice, of the procedures for seeking an expunction of the DNA sample. Amends proposed GS 15A-266.3A(d) (lists offenses applicable to DNA sample collection) to add that a DNA sample will also be obtained from a person violating GS 20-106 (receiving or transferring stolen vehicles); any offense punishable as a felony in GS Chapter 14, Article 8, assaults, and in GS 14-32.1, assaults on a handicapped person; any offense in GS Chapter 14, Article 14, Burglary (was, specified burglary offenses), Article 15, arson, or Article 17, robbery. Removes cyberstalking, under GS 14-196.3, from the list of applicable offenses. Amends proposed GS 15A-266.3A(f) to require the SBI to remove a person's DNA record and destroy any DNA biological samples if *both* conditions are determined as follows (was, within a specified time period if all three conditions met): (1) as to the charge, or all charges, resulting from the arrest upon which a DNA sample is required, a court or district attorney has taken action resulting in (a) a dismissed charge, (b) an acquittal, (c) no charge filed within the statute of limitations, if any (was, applicable time period), or (d) (*new*) no conviction has occurred, at least three years has passed since the date of arrest, and no active prosecution is occurring; and (2) the person's DNA record is not required to be in the database under some other provision of law or based upon an offense from a different occurrence (third condition in previous edition directed that a signed verification form be sent to the SBI within 30 days of the qualifying occurrence). Reorganizes and rewrites the procedures for obtaining expunction of a DNA sample from the database and databank as follows. Proposed GS 15A-266.3A(g) requires the defendant or counsel to present the prosecuting district attorney with a signed form, requesting expunction of the defendant's DNA record. The district attorney must then verify the request according to subsection (f)(1), to provide a signature as indicated, and submit the form to the SBI within 30 days of receipt, or notify the defendant that expunction is not granted. Upon receipt of the form from the district attorney, the SBI must, within 30 days of receipt, verify whether the record is not required to be part of the DNA database, expunction is granted under subsection (f), and if so, expunge the person's record and samples, and must inform the defendant, also within 30 days, that expunction was either granted or denied. Allows a defendant to file a motion to review the denial of the defendant's expunction request, or the failure of either the district attorney or the SBI to act within the prescribed time period. Deletes provision providing a procedure to extend the statutory periods for expunction. Makes any identification, warrant, probable cause to arrest, or arrest based upon a database match of the defendant's DNA sample, which occurs after the expiration of the statutory periods prescribed for expunction, invalid and inadmissible in the prosecution of the defendant for any criminal offense (previous version made any of these occurrences valid unless ruled otherwise by a final court decision). Provides that a DNA record and sample will not be expunged if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a felony offense (was, to a lesser-included

offense of the charge upon which the DNA sample was based). Makes other clarifying and organizational changes.

Amends GS 15A-266.4(a)(2) to remove language making the subdivision, requiring a DNA sample from persons convicted of designated offenses, retroactive and applicable to (i) any person convicted of any of the listed offenses, regardless of the date of conviction or (ii) any person acquitted of any of the listed offenses by reason of insanity.

Amends GS 15A-266.5 (tests to be performed on DNA sample) to clarify that the tests to be performed on each sample are to analyze and type *only* the genetic markers *that are used for identification purposes* contained in or derived from the DNA, among other requirements under current law. Further requires the Department of Justice, in consultation with the Administrative Office of the Courts and the Conference of District Attorneys, to study and develop a recommended procedure to place responsibility on the state to expunge DNA samples and records taken pursuant to proposed GS 15A-266.3A, and to report to designated parties on or before February 1, 2011.

Amends GS 15A-266.6 to direct the SBI to supply materials required to obtain a DNA sample and to forward the sample to the appropriate laboratory. Also adds that duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to provide a DNA sample, and excuses such employee from civil or criminal liability.

Amends GS 15A-266.7 to direct the SBI to adopt procedures to be used in the *collection, security, submission, identification, analysis, and storage* of DNA samples and typing results of submitted DNA samples.

Adds new section amending GS 15A-266.11 (penalties for unauthorized uses of DNA databank) to make it a Class H felony (was, Class 1 misdemeanor) for any person with access or possession of (was, by virtue of employment or official position has possession or access to) individually identifiable DNA information to willfully disclose that information to any person or agency not entitled to receive it. Also makes it a Class H felony (was, Class 1 misdemeanor) to willfully obtain individually identifiable DNA information without authorization.

Adds new section amending GS 15A-266.12 (confidentiality of records) to provide that DNA records and samples submitted to the SBI will not be disclosed to or shared with any person or agency, and are not a public record. States that the SBI is not required to provide the DNA database for criminal discovery purposes. Includes a list of authorized purposes for DNA release.

Adds new section amending GS 15A-534(a) (pertaining to conditions for pretrial release) to require a judicial official to make the collection of fingerprints or a DNA sample a condition of pretrial release, if the defendant is required to provide fingerprints or a DNA sample, as specified.

Removes sections (1) amending GS 15A-1382 which made conforming changes to reports of disposition involving DNA samples; (2) amending GS 7A-304(a), which assessed a tax of \$2 to fund the database and databank; (3) amending GS 15A-931 concerning indicating whether the defendant submitted a DNA sample in instances where the state voluntarily dismisses charges; and (4) directing the Department of Justice to fund implementation of the act with funds appropriated to or raised by the Department.

Adds a section providing that the act's provisions are severable.

Makes organizational changes and removes whereas clauses. Makes other clarifying, technical, and conforming changes, and makes a conforming change to the title.

Changes the act's effective date to January 1, 2011 (was, December 1, 2010, with a detailed exception for the funding provisions).

July 8, 2010

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. Senate amendment makes the following changes to 5th edition. Amends the violations for which a DNA sample is required under GS 15A-266.3A to include the following specified burglary offenses instead of any Article 14 burglary offense: GS 14-51 (first and second degree burglary), GS 14-53 (breaking out of dwelling house burglary), GS 14-54.1 (breaking or entering a place of religious worship), and GS 14-57 (burglary with explosives). Also deletes proposed GS 15A-266.6(d), which allowed law enforcement and corrections personnel to use reasonable force when an individual refuses to

provide a DNA sample. Changes the effective date of the act from January 1, 2011, to February 1, 2011.

July 10, 2010

H 1403. COLLECT DNA SAMPLE ON ARREST. Filed 4/9/09. Conference report recommends the following changes to 6th edition to reconcile matters in controversy.

Adds to and amends several subsections in proposed GS 15A-266.3A (DNA sample required for DNA analysis upon arrest for certain offenses) as follows. Adds subsection (b1) to provide that at the time a DNA sample is taken pursuant to the statute, the person obtaining the DNA sample will record, on an SBI-promulgated form, the date and time the sample was taken, the name of the person taking the DNA sample, the name and address of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. Requires the form to be maintained in the case file and be available to the prosecuting district attorney to complete requirements in (g1) of the statute.

Amends subsection (d), listing offenses applicable to the DNA sample requirement, to add GS 14-196.3, cyberstalking; GS 14-87, armed robbery (was, any offense in Article 17, robbery); and six specified assault offenses (was, any offense punishable as a felony in Article 8, assaults, and GS 14-32.1, assault on a handicapped person). Deletes GS 20-106, receiving or transferring stolen vehicles from the list of applicable offenses. Amends proposed GS 15A-266.3A(f)(1) (explaining one of the two necessary requirements for expunction) to add that a court or district attorney has taken action to convict the defendant of a lesser-included misdemeanor offense that is not an offense included in subsection (d) or (e) of the section, or one of the other listed results has occurred.

Deletes the previous expunction procedure, as detailed in (g), and instead provides and explains the expunction procedure in subsections (g), (g1), (g2), and (g3). Subsection (g) states that, prior to June 1, 2012, upon the occurrence of one of the events in (d) or (e) (listing applicable offenses), the defendant or defendant's counsel must provide the prosecuting district attorney with a signed request form, requesting that the defendant's DNA record be expunged from the database and that any biological samples in the databank be destroyed. On or after June 1, 2012, and upon the occurrence of an applicable offense, no request form will be required and the prosecuting district attorney will initiate the expunction procedure. Subsection (g1) states that, prior to June 1, 2012, within 30 days of receipt of the form required under (g) or upon the occurrence of an indicated event, and on or after June 1, 2012, within 30 days of the occurrence of an indicated event, the prosecuting district attorney will determine if a DNA sample was taken pursuant to the section, and if so, will: (1) verify and indicate the facts of the qualifying event on a verification form from the AOC; (2) include the last known address of the defendant on the verification form; (3) sign the verification form, or, if the defendant was acquitted or the charges were dismissed by the court, obtain a judge's signature; and (4) transmit the verification form to the SBI. Subsection (g2) states that, within 30 days of receipt of the verification form, the SBI will: (1) determine whether the person's DNA record is required to be in the database for any other reason; (2) remove the defendant's DNA record and samples if the previous requirement is satisfied; and (3) mail to the defendant, at the address on the verification form, a notice either documenting expunction of the record and destruction of the sample or notifying the defendant that the record and sample do not qualify for expunction. Retains the provision, now under subsection (g3), that the defendant may file a motion to review the denial of the defendant's request, or the failure of either the district attorney or the SBI to act within the prescribed time period. Makes additional conforming changes.

Amends GS 15A-534(a) (pertaining to conditions for pretrial release) to clarify that a judicial official must make the collection of fingerprints or a DNA sample a condition of pretrial release, if the defendant is required to provide fingerprints or a DNA sample, *and the fingerprints or sample have not yet been taken or the defendant has refused to provide the fingerprints or sample.*

July 28, 2010

SL 2010-94 (H 1403). COLLECT DNA SAMPLE ON ARREST. AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING

CERTAIN OFFENSES, AND TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION. Summarized in *Daily Bulletin* 4/9/09, 6/1/10, 7/1/10, 7/6/10, 7/7/10, 7/8/10, and 7/10/10. Enacted July 15, 2010. Effective February 1, 2011.