

May 25, 2010

S 1383. SAFER STREETS/DNA INITIATIVES. Filed 5/25/10. *TO AUTHORIZE THE COLLECTION AND ANALYSIS OF DNA SAMPLES FROM INDIVIDUALS ARRESTED FOR FELONY OFFENSES, TO PROVIDE FOR THE EXPUNGEMENT OF DNA RECORDS, TO STRENGTHEN PROVISIONS RELATING TO THE CONFIDENTIALITY OF SUCH DNA RECORDS, AND TO INCREASE THE COST OF COURT TO COVER THE EXPENSES OF DNA COLLECTION AND ANALYSIS.*

Provides that Article 13 of GS Chapter 15A may be cited as the *DNA Database and Databank Act of 2010* (was, 1993).

Policy. Amends GS 15A-266.1 to declare the establishment of a DNA database and databank to be in the best interest of the state citing the benefits and uses to be derived by the state in the collection of DNA from persons arrested for certain specified offenses and areas of offense.

Definitions. Makes technical, conforming, and clarifying changes to definitions as applied to Article 13 of GS Chapter 15A. Defines the following terms as used in Article 13: (1) *criminal justice agency*, (2) *qualifying offense*, (3) *arrestee*, and (4) *conviction*.

DNA database and databank. Amends GS 15A-266.3 to establish the state DNA database and DNA databank under the administration of the State Bureau of Investigation (SBI). Confers administrative responsibilities for the state DNA database and databank on the SBI. Specifies categories of records and information to be stored and maintained in the state DNA database.

Application of the Act. Amends GS 15A-266.4 to require the collection of DNA samples (was, blood sample required for DNA analysis) from persons convicted of, or arrested for the specified qualifying offenses. Provides that the DNA sample may be a blood or cheek swab sample. Provides that qualifying offenses include (1) all felonies, (2) assaults on handicapped persons, (3) stalking, and (4) sexual battery. Provides that persons convicted and incarcerated for the specified offenses prior to October 1, 2010 are to have a DNA sample taken before the person is paroled or released from the penal system or mental health facility. Also provides that a person convicted of any of the qualifying offenses who is not sentenced to a term of confinement must provide a DNA sample as a condition of the sentence.

Directs that a person who is required to register as a sex offender under GS 14-208.7 who has not already provided a DNA sample is required to do so. Also provides that a person who is arrested for any felony offense must provide a DNA sample at the time of arrest or booking, effective January 1, 2011.

Provides criteria applying to the collection of a DNA sample from a person who is convicted of a qualifying offense on or after October 1, 2010. Provides additional criteria regarding the collection of a DNA sample. Provides that a person who knowingly refuses to provide a DNA sample is guilty of a Class A1 misdemeanor.

Use of a DNA sample. Amends GS 15A-266.5 to expand the uses for analysis of DNA samples to include assisting in the recovery or identification of human remains, including for identification of missing persons. Provides limits on the allowed uses of any DNA sample stored in the state DNA databank. Directs that searches of the state DNA database are to be conducted in accordance with state and federal law and procedures. Authorizes the SBI to contract with third parties to implement the provisions of Article 13.

Procedures. Amends GS 15A-266.6 to direct the SBI to adopt policies to govern the procedures used in the submission, identification, analysis, and storage for DNA samples and typing results of the DNA samples submitted under Article 13. Provides that the procedures require compliance with national quality assurance standards.

DNA database exchange. Amends GS 15A-266.7 to authorize the SBI to create a separate population database, with all personal identification removed, of DNA samples that are obtained under Article 13. Permits the SBI to share population information with third parties that the SBI deems are necessary to assist the SBI with performing statistical analysis of the SBI's population database. Also provides that the population database may be made available to agencies participating in the CODIS (the federal Combined DNA Index System) system.

Amends GS 15A-266.8 to permit the SBI to revoke the right of a forensic lab within the state to exchange DNA identification records with federal, state, or local criminal justice agencies if the lab does not meet quality control and privacy standards as specified by the SBI.

Confidentially. Amends GS 15A-266.9 to specify criteria for treating all DNA records and samples submitted to the SBI under Article 13 as confidential. Directs that the records and samples are not to be disclosed or shared with any person or agency except as provided in GS 15A-266.8 (as amended in this act, GS 15A-266.7 now contains the information previously in GS 15A-266.8). Provides that samples and records submitted to the SBI under Article 13 are not public records as defined in GS 132-1. Provides additional criteria and limitations on access to confidential samples and records.

Unauthorized use of DNA Databank. Amends GS 15A-266.11 to make it a Class A1 misdemeanor (was, Class 1) for any person with access or possession of individually identifiable DNA information due to employment official position to willfully disclose that information to any person or agency not entitled to receive it. Also makes it a Class A1 misdemeanor to knowingly or intentionally tamper or attempt to tamper with any DNA sample, result of any forensic analysis of a DNA sample, or the DNA sample collection container.

Expunction of DNA record. Amends GS 15A-266.12 to provide grounds and procedures under which a person may request the expunction of the person's DNA record from the state DNA database.

Administrative function. Enacts GS 15A-266.13 to direct the SBI to generate policies and procedures to implement the provisions of Article 13, and provide for a liaison with the FBI and other criminal justice agencies relating to the state's participation in the CODIS program and national DNA index system or in any DNA database identified by the SBI.

Adds a new subdivision (9) to GS 7A-304(a) to provide for \$3 for all felonies where the defendant is convicted or pleads guilty to be paid to the Department of Justice to support the services of DNA collection and analysis.

Provides that the provisions of the act are to be liberally construed. Also provides that if any part or provision is held to be unconstitutional or otherwise invalid, it does not affect the rest of the act.

Makes organizational changes.

Becomes effective October 1, 2010 except where otherwise indicated.

Intro. by Clodfelter.

GS 15A

July 7, 2010

S 1383. SAFER STREETS/DNA INITIATIVES. Filed 5/25/10. Senate committee substitute makes the following changes to 1st edition.

Deletes section amending GS 15A-266.1, which amended the policy statement to explain the DNA database and databank establishment.

Amends GS 15A-266.2 to remove the definition for *Qualifying Offense*, and to amend the definition for *Conviction* to mean 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 (deletes additional language). Defines arrestee as a person arrested for an offense listed in GS 15A-266.3A(d) or (e) (was, arrested for a felony).

DNA Sample required upon arrest for certain offenses. Deletes amendments to GS 15A-266.4, requiring a DNA sample from persons convicted of, or arrested for, a qualifying offense, and providing additional requirements related to offenses, applicability, and administration of sample collection, and moves them to alternative statutes as follows. Adds a new section enacting GS 15A-266.3A, to require that a DNA sample for DNA analysis and testing will be obtained from any person who is arrested for committing an offense described in subsection (d) or (e) of the proposed section. Proposed GS 15A-266.3A(b) directs the arresting law enforcement officer to obtain or cause to be obtained, a DNA sample at the time of arrest, or when fingerprinted. If the person is arrested without a warrant, the DNA sample will not be taken until a probable cause determination is made. Instructs that the sample will be taken by cheek swab unless a court order authorizes that a blood sample be obtained. Further directs the arresting officer to forward, or cause to be forwarded, the DNA sample to the appropriate laboratory for DNA analysis and testing. Proposed subsection (b1) requires 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. Proposed subsections (d) and (e) list offenses applicable to DNA sample collection, including first and second degree murder, manslaughter, burglary, arson, robbery, rape, stalking, and other specified offenses (crimes covered previously were all felonies, GS 14-32.1, assault on handicapped persons, stalking and sexual battery). Proposed subsection (f) requires the SBI to remove a person's DNA record and destroy any DNA biological samples if both conditions are determined as follows: (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, or (d) 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. Proposed subsection (g) details the procedure for obtaining expunction of a DNA sample from the database and databank as follows. 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), 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 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. Proposed subsection (h) 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. Proposed subsection (i) 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. Proposed subsection (j) states that the SBI is not required to destroy or remove an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

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, (3) a person convicted of the offenses under subsection (b) who is not sentenced to a period of confinement, and (4) a person who has been incarcerated as a result of the conviction of one or more of the crimes listed in subsection (b) or a person found not guilty of the crimes by reason of insanity and committed to a mental health facility as a condition before parole or release. Makes additional technical, organizational, and conforming changes.

Amends GS 15A-266.5 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 (was, to analyze and type the genetic markers contained in or derived from the DNA), among other requirements under current law. Also directs the SBI to report annually to specified parties, on or before February 1, on information related to the DNA database and databank and expunction records, as indicated. 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. Deletes other amendments to GS 15A-266.5 in the previous edition, which expanded the uses for DNA samples, provided limits on the allowed uses of any DNA sample, and authorized the SBI to contract with third parties to implement the Article.

Amends GS 15A-266.6 to clarify the procedures for obtaining a DNA sample for 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. Continues to subject a defendant to a court's order to provide a DNA sample until the defendant's sample is analyzed and a record is successfully entered into the database. Also directs the SBI to supply materials required to obtain a DNA sample and to forward the sample to the appropriate laboratory. Allows

duly authorized law enforcement and corrections personnel to employ reasonable force in cases where an individual refuses to provide a DNA sample, and excuses such employee from civil or criminal liability. Makes additional clarifying and technical changes. Previous version deleted all provisions of the statute and directed the SBI to adopt procedures for collecting, analyzing, and storing DNA samples.

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, provided that the procedures include quality assurance guidelines. Further directs the SBI to adopt guidelines for DNA testing and DNA databasing laboratories that meet or exceed guidelines under the CODIS unit of the FBI. Instructs DNA samples to be securely stored in the DNA databank, and typing results to be securely stored in the database. Testing records will be on file at the SBI. Deletes amendments in the previous version, which authorized the SBI to create a separate population database of DNA samples and share population information with third parties, and directed the SBI to make the state database available to agencies, as indicated, and also for criminal investigation purposes.

Makes technical and conforming changes to GS 15A-266.8 (previous version deleted all provisions in the statute and allowed the SBI to revoke a forensic DNA laboratory's right to exchange DNA records for failing standards).

Moves amendments previously in GS 15A-266.9, providing for the confidentiality of all DNA records and samples and listing the authorized purposes for release, to GS 15A-266.12 (confidentiality of records).

Amends GS 15A-266.11 (penalties for unauthorized uses of DNA databank) to make it a Class H felony (was, Class A1 misdemeanor) for any person with access or possession of (current law includes: by virtue of employment or official position) 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 A1 misdemeanor) to willfully obtain individually identifiable DNA information without authorization. Deletes added language that made it a Class A1 misdemeanor to knowingly or intentionally tamper or attempt to tamper with any DNA sample, the result of a forensic analysis of a sample, or the collection container.

Deletes amendments to GS 15A-266.12 in previous version, which provided procedures and requirements for requesting expunction of a person's DNA sample and record from the database and databank.

Deletes proposed GS 15A-266.13, which directed the SBI to promulgate policies and procedures for implementing the Article, and provide for a liaison relating to the CODIS program and DNA databases.

Deletes amendment to GS 7A-304(a), which assessed a \$3 tax for all felonies to fund DNA collection and analysis services.

Adds a new section, enacting GS 15A-502A, to require that a DNA sample be obtained from any person arrested for an offense designated under GS 15A-266.3A, in accordance with Article 13 of GS Chapter 15A.

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.

Adds new section amending GS 7B-2201, to require that a DNA sample be taken from a juvenile when jurisdiction is transferred to superior court, if any of the transferred offenses are in GS 15A-266.3A.

Deletes section providing for liberal construction and severability of the act.

Makes organizational changes, and makes a conforming change to the title. Makes additional conforming, clarifying, and technical changes.

Effective January 1, 2011 (was, October 1, 2011 with detailed exception).