

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1403
PROPOSED COMMITTEE SUBSTITUTE H1403-PCS70568-RKf-98

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.



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

4 **(1) The DNA sample taken from the arrested person shall be by cheek swab or**
5 **by any other method than by a blood sample, unless a court order authorizes**
6 **that a DNA blood sample be obtained.**

7 **(2) If a DNA blood sample is taken, it shall comply with the requirements of**
8 **G.S. 15A-266.6(b).**

9 **(3) If the person is arrested without a warrant, then the DNA sample shall not be**
10 **taken until a determination has been made, pursuant to G.S. 15A-511(c)(1),**
11 **that there is probable cause to believe that a crime has been committed and**
12 **that the person arrested committed it.**

13 **(c) The DNA record of identification characteristics resulting from the DNA testing and**
14 **the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank**
15 **pursuant to this Article.**

16 **(d) This section shall apply to a person arrested for violating any one of the following**
17 **offenses in Chapter 14 of the General Statutes:**

18 **(1) G.S. 14-17. First and Second Degree Murder.**

19 **(2) G.S. 14-18. Manslaughter.**

20 **(3) Any offense in Article 7A, Rape and Other Sex Offenses.**

21 **(4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1,**
22 **Assault on a Handicapped Person.**

23 **(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A,**
24 **Human Trafficking.**

25 **(6) Any offense in Article 14, Burglary.**

26 **(7) Any offense in Article 15, Arson.**

27 **(8) Any offense in Article 17, Robbery.**

28 **(9) Any offense which would require the person to register under the provisions**
29 **of Article 27A of Chapter 14 of the General Statutes, Sex Offender and**
30 **Public Protection Registration Programs.**

31 **(10) G.S. 14-196.3, Cyberstalking.**

32 **(11) G.S. 14-277.3A, Stalking.**

33 **(e) This section shall also apply to a person arrested for attempting, solicitation of**
34 **another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the**
35 **violations included in subsection (d) of this section.**

36 **(f) The State Bureau of Investigation shall remove a person's DNA record, and destroy**
37 **any DNA biological samples that may have been retained, from the State DNA Database and**
38 **DNA Databank if all of the following conditions are met:**

39 **(1) The defendant or the defendant's counsel has provided the State with a**
40 **signed form, promulgated by the Administrative Office of the Courts,**
41 **requesting that the defendant's DNA record be expunged from the DNA**
42 **Database and that any biological samples in the DNA Databank be**
43 **destroyed.**

44 **(2) As to the charge, or all charges, upon which a DNA sample is required under**
45 **this section, a court or the State has taken action resulting in any one of the**
46 **following:**

47 **a. The charge has been dismissed.**

48 **b. The person has been acquitted of the charge.**

49 **c. No charge was filed within the applicable time period.**

50 **(3) The SBI has determined that the person's DNA record is not required to be in**
51 **the State DNA Database under some other provision of law, or is not**

1 required to be in the State DNA Database based upon an offense from a
2 different transaction or occurrence from the one which was the basis for the
3 person's arrest.

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

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

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

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

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

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

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

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

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

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

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

48 (1) who-Who is convicted of any of the crimes listed in subsection (b) of this
49 section or who is found not guilty of any of these crimes by reason of
50 insanity and committed to a mental health facility in accordance with
51 G.S. 15A-1321-G.S. 15A-1321, shall have-provide a DNA sample drawn

1 upon intake to jail, prison, or the mental health facility. In addition, every
 2 person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but
 3 who is not sentenced to a term of confinement, shall provide a DNA sample
 4 as a condition of the sentence.

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

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

- 16 (1) All felonies.
- 17 ~~(2) G.S. 14-32.1—Assaults on handicapped persons.~~
- 18 (3) ~~G.S. 14-277.3A or former~~ Former G.S. 14-277.3 – Stalking.
- 19 ~~(4) G.S. 14-27.5A—Sexual battery.~~
- 20 ~~(5) All offenses described in G.S. 15A-266.3A."~~

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

22 **"§ 15A-266.5. Tests to be performed on ~~blood sample.~~ DNA sample.**

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

- 24 (1) To analyze and type the genetic markers contained in or derived from the
 25 DNA.
- 26 (2) For law enforcement identification purposes.
- 27 (3) For research and administrative purposes, including:
 - 28 a. Development of a population database when personal identifying
 29 information is removed.
 - 30 b. To support identification research and protocol development of
 31 forensic DNA analysis methods.
 - 32 c. For quality control purposes.
 - 33 d. To assist in the recovery or identification of human remains from
 34 mass disasters or for other humanitarian purposes, including
 35 identification of missing persons.

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

39 (c) The SBI shall report on the DNA testing and analysis provided under this Article to
 40 the Joint Legislative Commission on Governmental Operations annually, no later than February
 41 1."

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

43 **"§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ DNA analysis.**

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

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

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

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

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

24 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

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

32 (a) The SBI shall:

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

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

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

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

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

47 "**§ 15A-266.8. DNA database exchange.**

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

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

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

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

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

22 **"§ 15A-502A. DNA sample upon arrest.**

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

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

27 **"§ 15A-1382. Reports of disposition; fingerprints, fingerprints and DNA samples.**

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

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

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

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

44 **"§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

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

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

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

3 **"§ 15A-270.15. Missing persons DNA identification system.**

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

10 (1) Unidentified persons.

11 (2) Unidentified human remains.

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

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

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

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

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

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

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

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

26 (1) Unidentified persons.

27 (2) Unidentified human remains.

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

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

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

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

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

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

40 ...

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

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