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PROPOSED SENATE COMMITTEE SUBSTITUTE H1403-PCS80654-SA-87

Short Title: Collect DNA Sample on Arrest.

(Public)

Sponsors:

Referred to:

April 13, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON  
3 ARRESTED FOR COMMITTING CERTAIN OFFENSES, AND TO AMEND THE  
4 STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION.

5 The General Assembly of North Carolina enacts:

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

8 **SECTION 2.** G.S. 15A-266.2 reads as rewritten:

9 **"§ 15A-266.2. Definitions.**

10 As used in this Article, unless another meaning is specified or the context clearly requires  
11 otherwise, the following terms have the meanings specified:

12 (1) "CODIS" means the FBI's national DNA identification index system that  
13 allows the storage and exchange of DNA records submitted by federal, State  
14 and local forensic DNA laboratories. The term "CODIS" is derived from  
15 Combined DNA Index ~~System~~ System (NDIS) administered and operated by  
16 the Federal Bureau of Investigation.

17 (1a) "Custodial Agency" means the governmental entity in possession of  
18 evidence collected as part of a criminal investigation or prosecution. ~~This~~  
19 ~~term includes a central evidence storage facility operated by a State agency.~~

20 (2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus~~ of cells  
21 and provides an individual's personal genetic blueprint. DNA encodes  
22 genetic information that is the basis of human heredity and forensic  
23 identification.

24 (3) "DNA Record" means DNA identification information stored in the State  
25 DNA Database or CODIS for the purpose of generating investigative leads  
26 or supporting statistical interpretation of DNA test results. The DNA record  
27 is the result obtained from the DNA ~~typing tests~~ analysis. The DNA record  
28 is comprised of the characteristics of a DNA sample which are of value in  
29 establishing the identity of individuals. The results of all DNA identification  
30 ~~tests~~ analyses on an individual's DNA sample are also collectively referred  
31 to as the DNA profile of an individual.



\* H 1 4 0 3 - P C S 8 0 6 5 4 - S A - 8 7 \*

- 1 (4) "DNA Sample" ~~in this Article means a blood, buccal, cheek swabs, or any~~  
2 ~~other biological sample containing cells provided by any person with respect~~  
3 ~~to convicted of offenses covered by this Article or submitted to the SBI~~  
4 ~~Laboratory State Bureau of Investigation pursuant to this Article for analysis~~  
5 ~~pursuant to a criminal investigation, investigation or storage or both.~~
- 6 (5) "FBI" means the Federal Bureau of Investigation.
- 7 (5a) "NDIS" means the National DNA Index System that is the national DNA  
8 database system of DNA profile records which that meet federal quality  
9 assurance and privacy standards.
- 10 (6) "SBI" means the State Bureau of Investigation. The SBI is responsible for  
11 ~~the policy management policy, management, and administration of the State~~  
12 ~~DNA identification record system to support law enforcement, and for~~  
13 ~~liaison with the FBI regarding the State's participation in~~  
14 ~~CODIS enforcement and other criminal justice agencies.~~
- 15 (7) "State DNA Database" means the SBI's DNA identification record system to  
16 support law enforcement. It is administered by the SBI and provides DNA  
17 records to the FBI for storage and maintenance in CODIS. The SBI's DNA  
18 Database system is the collective capability provided by computer software  
19 and procedures administered by the SBI to store and maintain DNA records  
20 related to ~~forensic casework, to convicted offenders required to provide a~~  
21 ~~DNA sample under this Article, and to anonymous DNA records used for~~  
22 ~~research or quality control, to: forensic casework; convicted offenders and~~  
23 ~~arrestees required to provide a DNA sample under this Article; persons~~  
24 ~~required to register as sex offenders under G.S. 14-208.7; unidentified~~  
25 ~~persons or body parts; missing persons; relatives of missing persons; and~~  
26 ~~anonymous DNA profiles used for forensic validation, forensic protocol~~  
27 ~~development, or quality control purposes or establishment of a population~~  
28 ~~statistics database for use by criminal justice agencies.~~
- 29 (8) "State DNA Databank" means the repository of DNA samples collected  
30 under the provisions of this Article.
- 31 (9) "Criminal Justice Agency" means an agency or institution of a federal, State,  
32 or local government, other than the office of the public defender, that  
33 performs as part of its principal function, activities relating to the  
34 apprehension, investigation, prosecution, adjudication, incarceration,  
35 supervision, or rehabilitation of criminal offenders.
- 36 (10) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(d)  
37 or (e).
- 38 (11) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea  
39 of nolo contendere, or a finding of not guilty by reason of insanity or mental  
40 disease or defect."

41 SECTION 3. G.S. 15A-266.3 reads as rewritten:

42 "**§ 15A-266.3. Procedural compatibility with the FBI Establishment of State DNA**  
43 **database and databank.**

44 The DNA identification system as established by the SBI shall be compatible with the  
45 procedures specified by the FBI, including use of comparable test procedures, laboratory  
46 equipment, supplies, and computer software. There is established under the administration of  
47 the SBI, the State DNA Database and State DNA Databank. The SBI shall provide DNA  
48 records to the FBI for the searching of DNA records nationwide and storage and maintenance  
49 by CODIS. The State DNA Databank shall serve as the repository for DNA samples obtained  
50 pursuant to this Article. The State DNA Database shall be compatible with the procedures  
51 specified by the FBI, including use of comparable test procedures, laboratory and computer

1 equipment, supplies and computer platform and software. The State DNA Database shall have  
2 the capability provided by computer software and procedures administered by the SBI to store  
3 and maintain DNA records related to all of the following:

- 4 (1) Crime scene evidence and forensic casework.
- 5 (2) Arrestees, offenders, and persons found not guilty by reason of insanity, who  
6 are required to provide a DNA sample under this Article.
- 7 (3) Persons required to register as sex offenders under G.S. 14-208.7.
- 8 (4) Unidentified persons or body parts.
- 9 (5) Missing persons.
- 10 (6) Relatives of missing persons.
- 11 (7) Anonymous DNA profiles used for forensic validation, forensic protocol  
12 development, or quality control purposes or establishment of a population  
13 statistics database, for use by criminal justice agencies."

14 **SECTION 4.** Article 13 of Chapter 15A of the General Statutes is amended by  
15 adding a new section to read:

16 **"§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

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

22 (b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA  
23 sample from an arrested person at the time of arrest, or when fingerprinted. However, if the  
24 person is arrested without a warrant, then the DNA sample shall not be taken until a probable  
25 cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be  
26 by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA  
27 blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The  
28 arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to  
29 the appropriate laboratory for DNA analysis and testing.

30 (b1) After taking a DNA sample from an arrested person required to provide a DNA  
31 sample pursuant to this section, the person taking the DNA sample shall provide the arrested  
32 person with a written notice of the procedures for seeking an expunction of the DNA sample  
33 pursuant to subsections (f) and (g) of this section. The Department of Justice shall provide the  
34 written notice required by this subsection.

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

38 (d) This section shall apply to a person arrested for violating G.S. 20-106, receiving or  
39 transferring stolen vehicles, or any one of the following offenses in Chapter 14 of the General  
40 Statutes:

- 41 (1) G.S. 14-17, First and Second Degree Murder.
- 42 (2) G.S. 14-18, Manslaughter.
- 43 (3) Any offense in Article 7A, Rape and Other Sex Offenses.
- 44 (4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1,  
45 Assault on a Handicapped Person.
- 46 (5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A,  
47 Human Trafficking.
- 48 (6) Any offense in Article 14, Burglary.
- 49 (7) Any offense in Article 15, Arson.
- 50 (8) Any offense in Article 17, Robbery.

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

4           (10)   G.S. 14-277.3A, Stalking.

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

8           (f)    The State Bureau of Investigation shall remove a person's DNA record, and destroy  
9           any DNA biological samples that may have been retained, from the State DNA Database and  
10          DNA Databank if both of the following are determined pursuant to subsection (g) of this  
11          section:

12          (1)    As to the charge, or all charges, resulting from the arrest upon which a DNA  
13          sample is required under this section, a court or the district attorney has  
14          taken action resulting in any one of the following:

15               a.    The charge has been dismissed.

16               b.    The person has been acquitted of the charge.

17               c.    No charge was filed within the statute of limitations, if any.

18               d.    No conviction has occurred, at least three years has passed since the  
19               date of arrest, and no active prosecution is occurring.

20          (2)    The person's DNA record is not required to be in the State DNA Database  
21          under some other provision of law, or is not required to be in the State DNA  
22          Database based upon an offense from a different transaction or occurrence  
23          from the one which was the basis for the person's arrest.

24          (g)    Subject to the requirements of subsection (f) of this section, the defendant or the  
25          defendant's counsel shall provide the prosecuting district attorney with a signed request form,  
26          promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA  
27          record be expunged from the DNA Database and that any biological samples in the DNA  
28          Databank be destroyed.

29          Upon receipt of the request form from the defendant or the defendant's counsel, the district  
30          attorney shall (i) determine whether one of the actions in subdivision (1) of subsection (f) of  
31          this section has occurred, and if so, (ii) sign the request form or, if the defendant was acquitted  
32          or the charges were dismissed by the court, provide the request form for signature by a judge,  
33          and (iii) transmit the request form to the SBI no later than 30 days following receipt of the  
34          form. If the district attorney determines that none of the actions in subdivision (1) of subsection  
35          (f) of this section have occurred, then no later than 30 days following receipt of the request  
36          form, the district attorney shall mail to the defendant, at the address specified in the request  
37          form, a notice that the DNA record and sample does not qualify for expunction.

38          Upon receipt of the request form from the district attorney, the SBI shall, within 30 days of  
39          receipt of the form, (i) determine whether the requirement of subdivision (2) of subsection (f)  
40          of this section has been met, and if so, (ii) remove the person's DNA record and samples as  
41          required by subsection (f) of this section. The SBI shall, within 30 days of receipt of the request  
42          form, mail to the defendant, at the address specified in the request form, a notice either (i)  
43          documenting expunction of the DNA record and destruction of the DNA sample, or (ii)  
44          notifying the defendant that the DNA record and sample do not qualify for expunction pursuant  
45          to subsection (f) of this section.

46          The defendant may file a motion with the court to review the denial of the defendant's  
47          request or the failure of either the district attorney or the SBI to act within the prescribed time  
48          period.

49          (h)    Any identification, warrant, probable cause to arrest, or arrest based upon a database  
50          match of the defendant's DNA sample which occurs after the expiration of the statutory periods

1 prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissible in  
 2 the prosecution of the defendant for any criminal offense.

3 (i) If the defendant is either found guilty of, or pleads guilty or nolo contendere to, a  
 4 misdemeanor offense that is a lesser-included offense of the charge upon which the DNA  
 5 sample was based, the DNA record and sample shall be expunged, unless the lesser-included  
 6 misdemeanor offense is an offense included in subsection (d) or (e) of this section. A DNA  
 7 record and sample shall not be expunged under this section if the defendant is either found  
 8 guilty of, or pleads guilty or nolo contendere to, a felony offense.

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

12 (k) The SBI shall adopt procedures to comply with this section."

13 **SECTION 5.** G.S. 15A-266.4 reads as rewritten:

14 "**§ 15A-266.4. ~~Blood sample~~DNA sample required for DNA analysis upon conviction or**  
 15 **finding of not guilty by reason of insanity.**

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

20 (1) ~~who~~Who is convicted of any of the crimes listed in subsection (b) of this  
 21 section or who is found not guilty of any of these crimes by reason of  
 22 insanity and committed to a mental health facility in accordance with  
 23 ~~G.S. 15A-1321~~G.S. 15A-1321, shall ~~have provide~~provide a DNA sample ~~drawn~~  
 24 upon intake to jail, prison, or the mental health facility. In addition, every  
 25 person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but  
 26 who is not sentenced to a term of confinement, shall provide a DNA sample  
 27 as a condition of the sentence.

28 (2) ~~A person who~~Who has been convicted and incarcerated as a result of a  
 29 conviction of one or more of ~~these crimes prior to December 1, 2003,~~the  
 30 crimes listed in subsection (b) of this section, or who was found not guilty of  
 31 any of these crimes by reason of insanity and committed to a mental health  
 32 facility in accordance with ~~G.S. 15A-1321 before December 1,~~  
 33 ~~2003,~~G.S. 15A-1321, shall ~~have provide~~provide a DNA sample ~~drawn~~before parole  
 34 or release from the penal system or before release from the mental health  
 35 facility.

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

- 37 (1) All felonies.
- 38 (2) ~~G.S. 14-32.1 Assaults on handicapped persons.~~
- 39 (3) ~~G.S. 14-277.3A or former~~Former G.S. 14-277.3 – Stalking.
- 40 (4) ~~G.S. 14-27.5A Sexual battery.~~
- 41 (5) All offenses described in G.S. 15A-266.3A."

42 **SECTION 6.** G.S. 15A-266.5 reads as rewritten:

43 "**§ 15A-266.5. Tests to be performed on ~~blood sample,~~DNA sample.**

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

- 45 (1) To analyze and type only the genetic markers that are used for identification  
 46 purposes contained in or derived from the DNA.
- 47 (2) For law enforcement identification purposes.
- 48 (3) For research and administrative purposes, including:
  - 49 a. Development of a population database when personal identifying  
 50 information is removed.

- 1           b.     To support identification research and protocol development of  
2           forensic DNA analysis methods.  
3           c.     For quality control purposes.  
4           d.     To assist in the recovery or identification of human remains from  
5           mass disasters or for other humanitarian purposes, including  
6           identification of missing persons.

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

10          (c)    The SBI shall report annually to the Joint Legislative Commission on Governmental  
11          Operations and to the Joint Legislative Corrections, Crime Control and Juvenile Justice  
12          Oversight Committee, on or before February 1, with information for the previous calendar year,  
13          which shall include: a summary of the operations and expenditures relating to the DNA  
14          Database and DNA Databank; the number of DNA records from arrestees entered; the number  
15          of DNA records from arrestees that have been expunged; and the number of DNA arrestee  
16          matches or hits that occurred with an unknown sample, and how many of those have led to an  
17          arrest and conviction; and how many letters notifying defendants that a record and sample have  
18          been expunged, along with the number of days it took to complete the expunction and  
19          notification process, from the date of the receipt of the verification form from the State.

20          (d)    The Department of Justice, in consultation with the Administrative Office of the  
21          Courts and the Conference of District Attorneys, shall study and develop a recommended  
22          procedure to place responsibility on the State to expunge DNA samples and records taken  
23          pursuant to G.S. 15A-266.3A, and shall report to the Joint Legislative Commission on  
24          Governmental Operations, the Joint Legislative Corrections, Crime Control and Juvenile  
25          Justice Oversight Committee, and the Courts Commission, on or before February 1, 2011."

26          **SECTION 7.** G.S. 15A-266.6 reads as rewritten:

27          "**§ 15A-266.6. Procedures for ~~withdrawal of blood sample for obtaining DNA~~**  
28          **~~analysis.~~ sample for analysis; refusal to provide sample.**

29          (a)    Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from  
30          persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA  
31          samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained  
32          immediately following sentencing. The sentencing court shall order any person not sentenced  
33          to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample  
34          pursuant to any provision of law requiring a sample and whose DNA record and sample have  
35          not been expunged pursuant to law, to report immediately following sentencing to the location  
36          designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform  
37          the court of the date, time, and location at which the sample shall be taken, and the court shall  
38          enter that date, time, and location into its order. A copy of the court order indicating the date,  
39          time, and location the person is to appear to have a sample taken shall be given to the sheriff. If  
40          a person not sentenced to a term of confinement fails to appear immediately following  
41          sentencing or at the date, time, and location designated in the court order, the sheriff shall  
42          inform the court of the failure to appear and the court may issue an order to show cause  
43          pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The  
44          defendant shall continue to be subject to the court's order to provide a DNA sample until such  
45          time as his or her DNA sample is analyzed and a record is successfully entered into the State  
46          DNA Database.

47          (b)    If, for any reason, the defendant provides a DNA blood sample instead of a cheek  
48          swab, ~~Only~~ only a correctional health nurse technician, physician, registered professional nurse,  
49          licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with  
50          phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted for analysis. No  
51          civil liability shall attach to any person authorized to draw blood by this section as a result of

1 drawing blood from any person if the blood was drawn according to recognized medical  
2 procedures. No person shall be relieved from liability for negligence in ~~the drawing of any~~  
3 obtaining a DNA sample-sample by any method.

4 (c) ~~The SBI shall provide to the sheriff the materials and supplies~~the materials,  
5 supplies, and postage prepaid envelopes necessary to draw-obtain a DNA sample from a person  
6 not sentenced to a term of confinement-required to provide a DNA sample pursuant to this  
7 Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and  
8 testing. Any DNA sample drawn from a person not sentenced to a term of confinement-obtained  
9 pursuant to this Article, other than a DNA sample obtained from a person who is incarcerated,  
10 shall be taken using the materials and supplies provided by the SBI.

11 (d) Duly authorized law enforcement and corrections personnel may employ reasonable  
12 force in cases where an individual refuses to provide a DNA sample required under this Article,  
13 and no such employee shall be civilly or criminally liable for the use of such reasonable force."

14 **SECTION 8.** G.S. 15A-266.7 reads as rewritten:

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

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

23 (a) The SBI shall:

24 (1) Adopt procedures to be used in the collection, security, submission,  
25 identification, analysis, and storage of DNA samples and typing results of  
26 DNA samples submitted under this Article. These procedures shall also  
27 include quality assurance guidelines to insure that DNA identification  
28 records meet audit standards for laboratories which submit DNA records to  
29 the State DNA Database.

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

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

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

37 **SECTION 9.** G.S. 15A-266.8 reads as rewritten:

38 "**§ 15A-266.8. DNA database exchange.**

39 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to  
40 contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines  
41 as established by the SBI, classify, and file the DNA record of identification characteristic  
42 profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such  
43 information available as provided in this section. The SBI may contract out DNA typing  
44 analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The  
45 results of the DNA profile of individuals in the State Database shall be made available to local,  
46 State, or federal law enforcement agencies, approved crime laboratories which serve these  
47 agencies, or the district attorney's office upon written or electronic request and in furtherance of  
48 an official investigation of a criminal offense. These records shall also be available upon  
49 receipt of a valid court order directing the SBI to release these results to appropriate parties not  
50 listed above, when the court order is signed by a superior court judge after a hearing. The SBI  
51 shall maintain a file of such court orders.

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

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

11 **SECTION 10.** G.S. 15A-266.11 reads as rewritten:

12 "**§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.**

13 (a) Any person ~~who, by virtue of employment, or official position,~~who has possession  
14 of, or access to, individually identifiable DNA information contained in the State DNA  
15 Database or Databank and who willfully discloses it in any manner to any person or agency not  
16 entitled to receive it is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H  
17 felony.

18 (b) Any person who, without authorization, willfully obtains individually identifiable  
19 DNA information from the State DNA Database or Databank is guilty of a ~~Class 1~~  
20 ~~misdemeanor in accordance with G.S. 14-3.~~Class H felony."

21 **SECTION 11.** G.S. 15A-266.12 reads as rewritten:

22 "**§ 15A-266.12. Confidentiality of records.**

23 (a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be  
24 treated as confidential and shall not be disclosed to or shared with any person or agency except  
25 as provided in G.S. 15A-266.8.

26 (b) Only DNA records and samples that directly relate to the identification of  
27 individuals shall be collected and stored. These records and samples shall solely be used as a  
28 part of the criminal justice system for the purpose of facilitating the personal identification of  
29 the perpetrator of a criminal offense; provided that in appropriate circumstances such records  
30 may be used to identify potential victims of mass disasters or missing persons.

31 (c) DNA records and DNA samples submitted to the SBI pursuant to this Article are not  
32 a public record as defined by G.S. 132-1.

33 (d) In the case of a criminal proceeding, requests to access a person's DNA record shall  
34 be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The SBI  
35 shall not be required to provide the State DNA Database for criminal discovery purposes.

36 (e) DNA records and DNA samples submitted to the SBI may only be released for the  
37 following authorized purposes:

38 (1) For law enforcement identification purposes, including the identification of  
39 human remains, to federal, State, or local criminal justice agencies.

40 (2) For criminal defense and appeal purposes, to a defendant who shall have  
41 access to samples and analyses performed in connection with the case in  
42 which such defendant is charged or was convicted.

43 (3) If personally identifiable information is removed to local, State, or federal  
44 law enforcement agencies for forensic validation studies, forensic protocol  
45 development or quality control purposes, and for establishment or  
46 maintenance of a population statistics database.

47 (f) In order to maintain the computer system security of the SBI DNA database  
48 program, the computer software and database structures used by the SBI to implement this  
49 Article are confidential."

50 **SECTION 12.** Article 23 of Chapter 15A of the General Statutes is amended by  
51 adding a new section to read:



1 **"§ 15A-502A. DNA sample upon arrest.**

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

5 **SECTION 12.1.** G.S. 15A-534(a) reads as rewritten:

6 "(a) In determining conditions of pretrial release a judicial official must impose at least  
7 one of the following conditions:

- 8 (1) Release the defendant on his written promise to appear.
- 9 (2) Release the defendant upon his execution of an unsecured appearance bond  
10 in an amount specified by the judicial official.
- 11 (3) Place the defendant in the custody of a designated person or organization  
12 agreeing to supervise him.
- 13 (4) Require the execution of an appearance bond in a specified amount secured  
14 by a cash deposit of the full amount of the bond, by a mortgage pursuant to  
15 G.S. 58-74-5, or by at least one solvent surety.
- 16 (5) House arrest with electronic monitoring.

17 If condition (5) is imposed, the defendant must execute a secured appearance bond under  
18 subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may  
19 elect to execute an appearance bond under subdivision (4). If the defendant is required to  
20 provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to  
21 G.S. 15A-266.3A or G.S. 15A-266.4, the judicial official shall make the collection of the  
22 fingerprints or DNA sample a condition of pretrial release. The judicial official may also place  
23 restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions  
24 of pretrial release."

25 **SECTION 13.** G.S. 7B-2201 reads as rewritten:

26 **"§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

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

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

33 **SECTION 14.** The provisions of this act are severable. If any provision is held  
34 invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of  
35 the act that can be given effect without the invalid provision.

36 **SECTION 15.** This act becomes effective January 1, 2011.