

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE BILL 1403
Committee Substitute Favorable 6/1/10
Committee Substitute #2 Favorable 7/1/10
Fourth Edition Engrossed 7/7/10
Senate Judiciary I Committee Substitute Adopted 7/8/10
Sixth Edition Engrossed 7/8/10
Proposed Conference Committee Substitute H1403-PCCS80656-SA-1

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, AND TO AMEND THE
STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION.

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. G.S. 15A-266.2 reads as rewritten:

"§ 15A-266.2. Definitions.

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

- (1) "CODIS" means the FBI's national DNA identification index system that
allows the storage and exchange of DNA records submitted by federal, State
and local forensic DNA laboratories. The term "CODIS" is derived from
Combined DNA Index ~~System~~ System (NDIS) administered and operated by
the Federal Bureau of Investigation.
- (1a) "Custodial Agency" means the governmental entity in possession of
evidence collected as part of a criminal investigation or prosecution. ~~This~~
~~term includes a central evidence storage facility operated by a State agency.~~
- (2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus~~ of cells
and provides an individual's personal genetic blueprint. DNA encodes
genetic information that is the basis of human heredity and forensic
identification.
- (3) "DNA Record" means DNA identification information stored in the State
DNA Database or CODIS for the purpose of generating investigative leads
or supporting statistical interpretation of DNA test results. The DNA record
is the result obtained from the DNA ~~typing tests.~~ analysis. The DNA record
is comprised of the characteristics of a DNA sample which are of value in
establishing the identity of individuals. The results of all DNA identification



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

1 tests ~~analyses~~ on an individual's DNA sample are also collectively referred
2 to as the DNA profile of an individual.

3 (4) "DNA Sample" ~~in this Article means a blood, buccal, cheek swabs, or any~~
4 ~~other biological sample containing cells provided by any person with respect~~
5 ~~to convicted of offenses covered by this Article or submitted to the SBI~~
6 ~~Laboratory State Bureau of Investigation pursuant to this Article for analysis~~
7 ~~pursuant to a criminal investigation investigation or storage or both.~~

8 (5) "FBI" means the Federal Bureau of Investigation.

9 (5a) "NDIS" means the National DNA Index System that is the national DNA
10 database system of DNA profile records which that meet federal quality
11 assurance and privacy standards.

12 (6) "SBI" means the State Bureau of Investigation. The SBI is responsible for
13 the ~~policy management~~ policy, management, and administration of the State
14 DNA identification record system to support law enforcement, and for
15 liaison with the FBI regarding the State's participation in
16 CODIS enforcement and other criminal justice agencies.

17 (7) "State DNA Database" means the SBI's DNA identification record system to
18 support law enforcement. It is administered by the SBI and provides DNA
19 records to the FBI for storage and maintenance in CODIS. The SBI's DNA
20 Database system is the collective capability provided by computer software
21 and procedures administered by the SBI to store and maintain DNA records
22 related to ~~forensic casework, to convicted offenders required to provide a~~
23 ~~DNA sample under this Article, and to anonymous DNA records used for~~
24 ~~research or quality control, to: forensic casework; convicted offenders and~~
25 arrestees required to provide a DNA sample under this Article; persons
26 required to register as sex offenders under G.S. 14-208.7; unidentified
27 persons or body parts; missing persons; relatives of missing persons; and
28 anonymous DNA profiles used for forensic validation, forensic protocol
29 development, or quality control purposes or establishment of a population
30 statistics database for use by criminal justice agencies.

31 (8) "State DNA Databank" means the repository of DNA samples collected
32 under the provisions of this Article.

33 (9) "Criminal Justice Agency" means an agency or institution of a federal, State,
34 or local government, other than the office of the public defender, that
35 performs as part of its principal function, activities relating to the
36 apprehension, investigation, prosecution, adjudication, incarceration,
37 supervision, or rehabilitation of criminal offenders.

38 (10) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(d)
39 or (e).

40 (11) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea
41 of nolo contendere, or a finding of not guilty by reason of insanity or mental
42 disease or defect."

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

44 "**§ 15A-266.3. Procedural compatibility with the FBI Establishment of State DNA**
45 **database and databank.**

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

1 pursuant to this Article. The State DNA Database shall be compatible with the procedures
2 specified by the FBI, including use of comparable test procedures, laboratory and computer
3 equipment, supplies and computer platform and software. The State DNA Database shall have
4 the capability provided by computer software and procedures administered by the SBI to store
5 and maintain DNA records related to all of the following:

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

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

18 **"§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

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

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

32 (b1) At the time a DNA sample is taken pursuant to this section, the person obtaining the
33 DNA sample shall record, on a form promulgated by the SBI, the date and time the sample was
34 taken, the name of the person taking the DNA sample, the name and address of the person from
35 whom the sample was taken, and the offense or offenses for which the person was arrested.
36 This record shall be maintained in the case file and shall be available to the prosecuting district
37 attorney for the purpose of completing the requirements of subsection (g1) of this section.

38 (b2) After taking a DNA sample from an arrested person required to provide a DNA
39 sample pursuant to this section, the person taking the DNA sample shall provide the arrested
40 person with a written notice of the procedures for seeking an expunction of the DNA sample
41 pursuant to subsections (f), (g), (g1), (g2), and (g3) of this section. The Department of Justice
42 shall provide the written notice required by this subsection.

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

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

- 48 (1) G.S. 14-17, First and Second Degree Murder.
- 49 (2) G.S. 14-18, Manslaughter.
- 50 (3) Any offense in Article 7A, Rape and Other Sex Offenses.

- 1 (4) G.S. 14-32, Felonious assault with deadly weapon with intent to kill or
2 inflicting serious injury; G.S. 14-32.4(a), Assault inflicting serious bodily
3 injury; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon
4 governmental officers or employees, company police officers, or campus
5 police officers; G.S. 14-34.5, Assault with a firearm on a law enforcement,
6 probation, or parole officer or on a person employed at a State or local
7 detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an
8 emergency medical technician, medical responder, emergency department
9 nurse, or emergency department physician; and G.S. 14-34.7, Assault
10 inflicting serious injury on a law enforcement, probation, or parole officer
11 or on a person employed at a State or local detention facility.
- 12 (5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A,
13 Human Trafficking.
- 14 (6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of
15 dwelling house burglary; G.S. 14-54.1, Breaking or entering a place of
16 religious worship; and G.S. 14-57, Burglary with explosives.
- 17 (7) Any offense in Article 15, Arson.
- 18 (8) G.S. 14-87, Armed robbery.
- 19 (9) Any offense which would require the person to register under the provisions
20 of Article 27A of Chapter 14 of the General Statutes, Sex Offender and
21 Public Protection Registration Programs.
- 22 (10) G.S. 14-196.3, Cyberstalking.
- 23 (11) G.S. 14-277.3A, Stalking.
- 24 (e) This section shall also apply to a person arrested for attempting, solicitation of
25 another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the
26 violations included in subsection (d) of this section.
- 27 (f) The State Bureau of Investigation shall remove a person's DNA record, and destroy
28 any DNA biological samples that may have been retained, from the State DNA Database and
29 DNA Databank if both of the following are determined pursuant to subsection (g) of this
30 section:
- 31 (1) As to the charge, or all charges, resulting from the arrest upon which a DNA
32 sample is required under this section, a court or the district attorney has
33 taken action resulting in any one of the following:
- 34 a. The charge has been dismissed.
- 35 b. The person has been acquitted of the charge.
- 36 c. The defendant is convicted of a lesser-included misdemeanor offense
37 that is not an offense included in subsection (d) or (e) of this section.
- 38 d. No charge was filed within the statute of limitations, if any.
- 39 e. No conviction has occurred, at least three years has passed since the
40 date of arrest, and no active prosecution is occurring.
- 41 (2) The person's DNA record is not required to be in the State DNA Database
42 under some other provision of law, or is not required to be in the State DNA
43 Database based upon an offense from a different transaction or occurrence
44 from the one which was the basis for the person's arrest.
- 45 (g) Prior to June 1, 2012, upon the occurrence of one of the events in sub-subdivision d.
46 or e. of subdivision (1) of subsection (f) of this section, the defendant or the defendant's counsel
47 shall provide the prosecuting district attorney with a signed request form, promulgated by the
48 Administrative Office of the Courts, requesting that the defendant's DNA record be expunged
49 from the DNA Database and that any biological samples in the DNA Databank be destroyed.
50 On or after June 1, 2012, upon the occurrence of one of the events in sub-subdivision d. or e. of
51 subdivision (1) of subsection (f) of this section, no request form shall be required and the

1 prosecuting district attorney shall initiate the procedure provided in subsection (g1) of this
2 section.

3 (g1) Prior to June 1, 2012, within 30 days of the receipt of the form required by
4 subsection (g) of this section or the occurrence of one of the events in sub-subdivision a., b., or
5 c. of subdivision (1) of subsection (f) of this section; and on or after June 1, 2012, within 30
6 days of the occurrence of one of the events in subdivision (1) of subsection (f) of this section,
7 the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this
8 section, and if so, shall:

9 (1) Verify and indicate the facts of the qualifying event on a verification form
10 promulgated by the Administrative Office of the Courts.

11 (2) Include the last known address of the defendant, as reflected in the court
12 files, on the verification form.

13 (3) Sign the verification form or, if the defendant was acquitted or the charges
14 were dismissed by the court, obtain the signature of a judge.

15 (4) Transmit the verification form to the SBI.

16 (g2) Within 30 days of receipt of the verification form, the SBI shall:

17 (1) Determine whether the requirement of subdivision (2) of subsection (f) of
18 this section has been met.

19 (2) If the requirement has been met, remove the defendant's DNA record and
20 samples as required by subsection (f) of this section.

21 (3) Mail to the defendant, at the address specified in the verification form, a
22 notice either:

23 a. Documenting expunction of the DNA record and destruction of the
24 DNA sample, or

25 b. Notifying the defendant that the DNA record and sample do not
26 qualify for expunction pursuant to subsection (f) of this section.

27 (g3) The defendant may file a motion with the court to review the denial of the
28 defendant's request or the failure of either the district attorney or the SBI to act within the
29 prescribed time period.

30 (h) Any identification, warrant, probable cause to arrest, or arrest based upon a database
31 match of the defendant's DNA sample which occurs after the expiration of the statutory periods
32 prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissible in
33 the prosecution of the defendant for any criminal offense.

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

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

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

39 "**§ 15A-266.4. ~~Blood sample~~DNA sample required for DNA analysis upon conviction or**
40 **finding of not guilty by reason of insanity.**

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

45 (1) ~~who~~Who is convicted of any of the crimes listed in subsection (b) of this
46 section or who is found not guilty of any of these crimes by reason of
47 insanity and committed to a mental health facility in accordance with
48 ~~G.S. 15A-1321~~G.S. 15A-1321, shall ~~have provide~~ a DNA sample ~~drawn~~
49 upon intake to jail, prison, or the mental health facility. In addition, every
50 person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but

1 who is not sentenced to a term of confinement, shall provide a DNA sample
2 as a condition of the sentence.

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

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

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

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

18 **"§ 15A-266.5. Tests to be performed on ~~blood sample.~~ DNA sample.**

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

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

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

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

45 (d) The Department of Justice, in consultation with the Administrative Office of the
46 Courts and the Conference of District Attorneys, shall study, develop, and recommend an
47 automated procedure to facilitate the process of expunging DNA samples and records taken
48 pursuant to G.S. 15A-266.3A, and shall report to the Joint Legislative Commission on
49 Governmental Operations, the Joint Legislative Corrections, Crime Control and Juvenile
50 Justice Oversight Committee, and the Courts Commission, on or before February 1, 2011."

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

1 "**§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ obtaining DNA**
2 **analysis.** ~~sample for analysis; refusal to provide sample.~~

3 (a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from
4 persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA
5 samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained
6 immediately following sentencing. The sentencing court shall order any person not sentenced
7 to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample
8 pursuant to any provision of law requiring a sample and whose DNA record and sample have
9 not been expunged pursuant to law, to report immediately following sentencing to the location
10 designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform
11 the court of the date, time, and location at which the sample shall be taken, and the court shall
12 enter that date, time, and location into its order. A copy of the court order indicating the date,
13 time, and location the person is to appear to have a sample taken shall be given to the sheriff. If
14 a person not sentenced to a term of confinement fails to appear immediately following
15 sentencing or at the date, time, and location designated in the court order, the sheriff shall
16 inform the court of the failure to appear and the court may issue an order to show cause
17 pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The
18 defendant shall continue to be subject to the court's order to provide a DNA sample until such
19 time as his or her DNA sample is analyzed and a record is successfully entered into the State
20 DNA Database.

21 (b) If, for any reason, the defendant provides a DNA blood sample instead of a cheek
22 swab, ~~Only~~ only a correctional health nurse technician, physician, registered professional nurse,
23 licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with
24 phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted for analysis. No
25 civil liability shall attach to any person authorized to draw blood by this section as a result of
26 drawing blood from any person if the blood was drawn according to recognized medical
27 procedures. No person shall be relieved from liability for negligence in ~~the drawing of any~~
28 obtaining a DNA sample. ~~sample by any method.~~

29 (c) The SBI shall provide ~~to the sheriff the materials and supplies~~ the materials,
30 supplies, and postage prepaid envelopes necessary to ~~draw~~ obtain a DNA sample from a person
31 not sentenced to a term of confinement. ~~required to provide a DNA sample pursuant to this~~
32 Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and
33 testing. Any DNA sample ~~drawn from a person not sentenced to a term of confinement~~ obtained
34 pursuant to this Article, other than a DNA sample obtained from a person who is incarcerated,
35 shall be taken using the materials and supplies provided by the SBI."

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

37 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

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

45 (a) The SBI shall:

46 (1) Adopt procedures to be used in the collection, security, submission,
47 identification, analysis, and storage of DNA samples and typing results of
48 DNA samples submitted under this Article. These procedures shall also
49 include quality assurance guidelines to insure that DNA identification
50 records meet audit standards for laboratories which submit DNA records to
51 the State DNA Database.

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

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

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

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

9 **"§ 15A-266.8. DNA database exchange.**

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

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

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

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

34 **"§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.**

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

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

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

44 **"§ 15A-266.12. Confidentiality of records.**

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

48 (b) Only DNA records and samples that directly relate to the identification of
49 individuals shall be collected and stored. These records and samples shall solely be used as a
50 part of the criminal justice system for the purpose of facilitating the personal identification of

1 the perpetrator of a criminal offense; provided that in appropriate circumstances such records
2 may be used to identify potential victims of mass disasters or missing persons.

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

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

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

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

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

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

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

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

24 **"§ 15A-502A. DNA sample upon arrest.**

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

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

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

31 (1) Release the defendant on his written promise to appear.

32 (2) Release the defendant upon his execution of an unsecured appearance bond
33 in an amount specified by the judicial official.

34 (3) Place the defendant in the custody of a designated person or organization
35 agreeing to supervise him.

36 (4) Require the execution of an appearance bond in a specified amount secured
37 by a cash deposit of the full amount of the bond, by a mortgage pursuant to
38 G.S. 58-74-5, or by at least one solvent surety.

39 (5) House arrest with electronic monitoring.

40 If condition (5) is imposed, the defendant must execute a secured appearance bond under
41 subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may
42 elect to execute an appearance bond under subdivision (4). If the defendant is required to
43 provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to
44 G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been
45 taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial
46 official shall make the collection of the fingerprints or DNA sample a condition of pretrial
47 release. The judicial official may also place restrictions on the travel, associations, conduct, or
48 place of abode of the defendant as conditions of pretrial release."

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

50 **"§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

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

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

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

10 **SECTION 15.** This act becomes effective February 1, 2011.