

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH80131-LHf-85 (2/4)

Short Title: Collect DNA Sample on Arrest.

(Public)

Sponsors: Representative Neumann.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON
ARRESTED FOR COMMITTING A FELONY AND TO ESTABLISH THE MISSING
PERSONS DNA IDENTIFICATION SYSTEM AS PART OF THE STATE'S CURRENT
DNA DATABASE AND DNA DATABANK.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 15A of the General Statutes is amended by
adding a new section to read:

"§ 15A-502A. DNA sample.

(a) The following definitions apply in this section:

(1) 'DNA.' – As defined in G.S. 15A-266.2.

(2) 'DNA Record.' – As defined in G.S. 15A-266.2.

(3) 'DNA Sample.' – As defined in G.S. 15A-266.2.

(4) 'SBI.' – State Bureau of Investigation.

(b) Unless a DNA sample has previously been obtained by lawful process and stored in the State DNA database, and that sample has not been expunged pursuant to G.S. 15A-148, on or after December 1, 2009, any person who is arrested for committing a felony must provide his or her DNA sample pursuant to this section for DNA analysis and testing.

(c) It is the duty of the arresting law enforcement officer to obtain the arrested person's DNA sample and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. A qualified member of the health profession shall take the DNA sample. If the arrested person objects to having a DNA blood sample taken, then a sample of saliva, hair, body tissue, or other biological material that is appropriate for DNA testing shall be taken for the DNA sample, unless provided otherwise by a court order. No unreasonable or unnecessary force shall be used to obtain the DNA sample.

(d) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the State Bureau of Investigation in the State DNA Databank pursuant to Article 13 of Chapter 15A of the General Statutes."

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 State and



1 local forensic DNA laboratories. The term "CODIS" is derived from
2 Combined DNA Index System.

3 (2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells
4 and provides an individual's personal genetic blueprint. DNA encodes
5 genetic information that is the basis of human heredity and forensic
6 identification.

7 (2a) "DNA Blood Sample" in this Article means a blood sample provided by any
8 person convicted of offenses covered by this Article or submitted to the SBI
9 Laboratory for analysis pursuant to a criminal investigation. The term also
10 includes a blood sample submitted under the missing persons DNA
11 identification system pursuant to G.S. 15A-270.15.

12 (3) "DNA Record" means DNA identification information stored in the State
13 DNA Database or CODIS for the purpose of generating investigative leads
14 or supporting statistical interpretation of DNA test results. The DNA record
15 is the result obtained from the DNA typing tests. The DNA record is
16 comprised of the characteristics of a DNA sample which are of value in
17 establishing the identity of individuals. The results of all DNA identification
18 tests on an individual's DNA sample are also collectively referred to as the
19 DNA profile of an individual.

20 (4) "DNA Sample" in this Article ~~means~~ means either: (i) a blood sample as
21 defined by this section, provided by any person convicted of offenses
22 covered by this Article or submitted to the SBI Laboratory for analysis
23 pursuant to a criminal investigation; (ii) a sample of saliva, hair, body tissue,
24 or biological material other than blood that is appropriate for DNA testing or
25 analysis and that is provided by a person arrested for a felony and submitted
26 for DNA analysis by the SBI Laboratory pursuant to G.S. 15A-502A and
27 this Article. The term also includes a sample of saliva, hair, body tissue, or
28 biological material other than blood that is appropriate for DNA testing or
29 analysis submitted under the missing persons DNA identification system
30 pursuant to G.S. 15A-270.15.

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

32 (6) "SBI" means the State Bureau of Investigation. The SBI is responsible for
33 the policy management and administration of the State DNA identification
34 record system to support law enforcement, and for liaison with the FBI
35 regarding the State's participation in CODIS.

36 (7) "State DNA Database" means the SBI's DNA identification record system to
37 support law enforcement. It is administered by the SBI and provides DNA
38 records to the FBI for storage and maintenance in CODIS. The SBI's DNA
39 Database system is the collective capability provided by computer software
40 and procedures administered by the SBI to store and maintain DNA records
41 related to forensic casework, to convicted offenders required to provide a
42 DNA sample under this Article, and to anonymous DNA records used for
43 research or quality control.

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

46 **SECTION 3.** G.S. 15A-266.4(a) reads as rewritten:

47 "(a) Unless a DNA blood sample has previously been obtained by lawful process and
48 stored in the State DNA database, and that sample has not been expunged pursuant to
49 G.S. 15A-148, on or after December 1, 2003, a person who is convicted of any of the crimes
50 listed in subsection (b) of this section or who is found not guilty of any of these crimes by
51 reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321

1 shall have a DNA blood sample drawn upon intake to jail, prison, or the mental health facility.
2 In addition, every 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 blood sample as a
4 condition of the sentence. A person who has been convicted and incarcerated as a result of a
5 conviction of one or more of these crimes prior to December 1, 2003, or who was found not
6 guilty of any of these crimes by reason of insanity and committed to a mental health facility in
7 accordance with G.S. 15A-1321 before December 1, 2003, shall have a DNA blood sample
8 drawn before parole or release from the penal system or before release from the mental health
9 facility."

10 **SECTION 4.** G.S. 15A-266.5 reads as rewritten:

11 "**§ 15A-266.5. Tests to be performed on ~~blood sample.~~ DNA sample.**

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

- 13 (1) To analyze and type the genetic markers contained in or derived from the
14 DNA.
- 15 (2) For law enforcement identification purposes.
- 16 (3) For research and administrative purposes, including:
 - 17 a. Development of a population database when personal identifying
18 information is removed.
 - 19 b. To support identification research and protocol development of
20 forensic DNA analysis methods.
 - 21 c. For quality control purposes.
 - 22 d. To assist in the recovery or identification of human remains from
23 mass disasters or for other humanitarian purposes, including
24 identification of missing persons.

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

28 **SECTION 5.** G.S. 15A-266.6 reads as rewritten:

29 "**§ 15A-266.6. Procedures for withdrawal of blood sample for DNA analysis.**

30 (a) Each DNA blood sample required to be drawn pursuant to G.S. 15A-266.4 from
31 persons who are incarcerated shall be drawn at the place of incarceration. DNA blood samples
32 from persons who are not sentenced to a term of confinement shall be drawn immediately
33 following sentencing. The sentencing court shall order any person not sentenced to a term of
34 confinement to report immediately following sentencing to the location designated by the
35 sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date,
36 time, and location at which the sample shall be taken, and the court shall enter that date, time,
37 and location into its order. A copy of the court order indicating the date, time, and location the
38 person is to appear to have a sample taken shall be given to the sheriff. If a person not
39 sentenced to a term of confinement fails to appear immediately following sentencing or at the
40 date, time, and location designated in the court order, the sheriff shall inform the court of the
41 failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and
42 may issue an order for arrest pursuant to G.S. 5A-16.

43 (b) Only a correctional health nurse technician, physician, registered professional nurse,
44 licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with
45 phlebotomy training shall draw any DNA blood sample to be submitted for analysis. No civil
46 liability shall attach to any person authorized to draw blood by this section as a result of
47 drawing blood from any person if the blood was drawn according to recognized medical
48 procedures. No person shall be relieved from liability for negligence in the drawing of any
49 DNA blood sample.

50 (c) The SBI shall provide to the sheriff the materials and supplies necessary to draw a
51 DNA blood sample from a person not sentenced to a term of confinement. Any DNA blood

1 sample drawn from a person not sentenced to a term of confinement shall be taken using the
2 materials and supplies provided by the SBI."

3 **SECTION 6.** The catch line of G.S. 15A-266.7 reads as rewritten:

4 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample."**

5 **SECTION 7.** G.S. 15A-266.8 reads as rewritten:

6 "**§ 15A-266.8. DNA database exchange.**

7 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to
8 contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines
9 as established by the SBI, classify, and file the DNA record of identification characteristic
10 profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ G.S. 15A-266.7, 15A-502A,
11 and 15A-270.15 and to make such information available as provided in this section. The SBI
12 may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as
13 established by the SBI. The results of the DNA profile of individuals in the State Database shall
14 be made available to local, State, or federal law enforcement agencies, approved crime
15 laboratories which serve these agencies, or the district attorney's office upon written or
16 electronic request and in furtherance of an official investigation of a criminal offense. These
17 records shall also be available upon receipt of a valid court order directing the SBI to release
18 these results to appropriate parties not listed above, when the court order is signed by a superior
19 court judge after a hearing. The SBI shall maintain a file of such court orders.

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

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

30 **SECTION 8.** G.S. 15A-1382 reads as rewritten:

31 "**§ 15A-1382. Reports of disposition; ~~fingerprints~~ fingerprints and DNA samples.**

32 (a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the
33 disposition of the case, a report of the disposition of the charges shall be made to the State
34 Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days
35 following disposition. When a DNA sample is taken from the defendant pursuant to
36 G.S. 15A-502A prior to the disposition of the case, a report of the disposition of the charges
37 shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of
38 Investigation within 60 days following disposition.

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

46 (c) If a convicted felon did not have a DNA blood sample taken pursuant to
47 G.S. 15A-502A prior to the disposition of the case, then a DNA blood sample shall be taken
48 from the felon in accordance with Article 13 of this Chapter and submitted to the State Bureau
49 of Investigation along with the report of the disposition of the charges on forms supplied by the
50 State Bureau of Investigation as provided by Article 13 of this Chapter."

51 **SECTION 9.** G.S. 7B-2201 reads as rewritten:

1 **"§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

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

5 (b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample
6 shall be taken from the juvenile pursuant to G.S. 15A-502A."

7 **SECTION 10.** Article 13 of Chapter 15A of the General Statutes is amended by
8 adding the following new sections to read:

9 **"§ 15A-270.15. Missing persons DNA identification system.**

10 (a) The SBI shall establish and administer a missing persons DNA identification system
11 as part of the State DNA Database and the State DNA Databank. The purpose of the missing
12 persons DNA identification system is to facilitate the use of DNA records by law enforcement
13 agencies and the Chief Medical Examiner in the identification and location of missing and
14 unidentified persons or human remains. The DNA missing persons identification system shall
15 consist of all of the following DNA indexes:

16 (1) Unidentified persons.

17 (2) Unidentified human remains.

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

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

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

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

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

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

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

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

32 (1) Unidentified persons.

33 (2) Unidentified human remains.

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

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

36 (5) Persons required to provide a DNA sample under G.S. 15A-502A.

37 **"§ 15A-270.16. DNA Identification System Fund created.**

38 (a) The "DNA Identification System Fund" is established in the Department of Justice.
39 The Fund shall consist of all money received by appropriation, gift, grant, all money collected
40 pursuant to this section, and all investment income from the Fund. Money and investment
41 income in the Fund at the end of any fiscal year shall not revert to the General Fund but shall
42 remain in the DNA Identification System Fund. The moneys in the Fund shall be used to assist
43 with the costs of maintaining the DNA Databank established under this Article, collecting and
44 storing DNA samples under this Article, and administering this Article.

45 (b) When a person is convicted of an offense listed in G.S. 15A-266.4(b), the court shall
46 assess a fee of one hundred dollars (\$100.00) in addition to any other fee, restitution, or fine.
47 The fee shall be deposited in the DNA Identification System Fund established by this section."

48 **SECTION 11.** This act becomes effective December 1, 2009, and applies to arrests
49 made on or after that date.