

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

3

HOUSE BILL 1403
Committee Substitute Favorable 6/1/10
Committee Substitute #2 Favorable 7/1/10

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, 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. DNA upon arrest.

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA
record stored in the State DNA Database, and that record and sample have 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.

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



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

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

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

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

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

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

16 (2) G.S. 14-18. Manslaughter.

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

18 (4) Any offense in Article 10, Kidnapping and Abduction, or Article 10A,
19 Human Trafficking.

20 (5) Any offense in Article 14, Burglary.

21 (6) Any offense which would require the person to register under the provisions
22 of Article 27A of Chapter 14 of the General Statutes, Sex Offender and
23 Public Protection Registration Programs.

24 (7) G.S. 14-196.3, Cyberstalking.

25 (8) G.S. 14-277.3A, Stalking.

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

29 (f) The State Bureau of Investigation shall remove a person's DNA record, and destroy
30 any DNA biological samples that may have been retained from the State DNA Database and
31 DNA Databank within the time period specified in subsection (i) of this section, if all of the
32 following conditions are met:

33 (1) As to the charge, or all charges, upon which a DNA sample is required under
34 this section, a court or the State has taken action resulting in any one of the
35 following:

36 a. The charge has been dismissed. If the dismissal is in writing pursuant
37 to G.S. 15A-931(a), the form used by the District Attorney or
38 designee to enter the dismissal shall reflect whether the defendant
39 had provided a DNA sample pursuant to this section. If the dismissal
40 is entered in open court, then the District Attorney or designee shall
41 indicate whether the defendant had provided a DNA sample pursuant
42 to this section.

43 b. The person has been acquitted of the charge. Upon the acquittal of
44 the charge, the prosecutor shall indicate in open court whether the
45 defendant had provided a DNA sample pursuant to this section, and
46 the clerk shall so indicate in the case file.

47 c. No charge was filed within the applicable time period.

48 (2) The State has determined that the person's DNA record is not required to be
49 in the State DNA Database under some other provision of law, or is not
50 required to be in the State DNA Database based upon an offense from a

1 different transaction or occurrence from the one which was the basis for the
2 person's arrest.

3 (3) The State has verified that the requirements of subdivision (1) and
4 subdivision (2) of this subsection have been met. If so, the State shall so
5 indicate these facts on a form promulgated by the Administrative Office of
6 the Courts, obtain the signature of a judge or the District Attorney on the
7 form, and then transmit the form to the SBI. If the defendant qualifies for an
8 expunction, then the State shall transmit the completed verification form to
9 the SBI no later than 30 days following the occurrence of the qualifying
10 circumstance in subdivision (1) of this subsection. The State shall include
11 the last known address of the defendant, as reflected in the court files, on the
12 verification form.

13 (g) The State shall notify the defendant, no later than 30 days from the qualifying
14 circumstance in subdivision (1) of subsection (f) of this section, whether or not the defendant's
15 DNA record and sample qualifies for expunction. If the defendant's DNA record and sample
16 qualify for expunction, then the State shall include the date that the verification form was
17 transmitted to the SBI in the notification. A notification sent by mail to the last known address
18 of the defendant, as reflected in the court files, shall satisfy the requirements of this subsection.
19 The defendant may seek judicial review of any determination by the State that the DNA record
20 or sample do not qualify for expunction under this section.

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

24 (i) Upon receipt of the verification form, the SBI shall have 30 days to expunge the
25 DNA record and sample and to mail a letter documenting the expunction to the person who
26 provided the DNA sample at the address specified in the verification form.

27 (j) If the State or the SBI are unable to meet the processing times for expunction as
28 required under this section, the State or SBI shall seek a judicial order granting such additional
29 time to complete the DNA expunction as the court deems appropriate. In any matter based
30 upon a database match of the defendant's DNA sample which occurs after the expiration of the
31 time that had been allowed for expunction of the defendant's DNA sample, a court shall
32 determine whether any database matches to the defendant's DNA sample that occur after the
33 statutory periods prescribed for expunction, or following the expiration of any court-granted
34 extension of the statutory periods, should result in the invalidation of any identification,
35 warrant, probable cause to arrest, or arrest based upon a database match. Any identification,
36 warrant, probable cause to arrest, or arrest based upon a database match shall be valid unless
37 ruled otherwise by a final court decision.

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

39 (l) A DNA record and sample shall not be expunged under this section if the defendant
40 is either found guilty of, or pleads guilty or nolo contendere to, a lesser-included offense of the
41 charge upon which the DNA sample was based; except that a DNA record and sample shall be
42 expunged under this section if the defendant is either found guilty of, or pleads guilty or nolo
43 contendere to, a misdemeanor not included in subsection (d) or (e) of this section. Nothing in
44 this Article shall be construed as prohibiting either the collection of a DNA sample or the
45 retention of a DNA record or sample in the State DNA Database and DNA Databank as a
46 condition of a plea bargain."

47 **SECTION 2.1.** G.S. 15A-931(a) reads as rewritten:

48 "**§ 15A-931. Voluntary dismissal of criminal charges by the State.**

49 (a) Except as provided in G.S. 20-138.4, the prosecutor may dismiss any charges stated
50 in a criminal pleading including those deferred for prosecution by entering an oral dismissal in
51 open court before or during the trial, or by filing a written dismissal with the clerk at any time.

1 If the dismissal is in writing, the prosecutor shall indicate on the form whether the defendant
2 had submitted a DNA sample pursuant to G.S. 15A-266.3A. If the dismissal is entered in open
3 court, then the prosecutor shall also indicate whether the defendant had submitted a DNA
4 sample pursuant to G.S. 15A-266.3A. The clerk must record the dismissal entered by the
5 prosecutor and note in the case file whether a jury has been impaneled or evidence has been
6 introduced, introduced, as well as indicate whether the defendant had submitted a DNA sample
7 pursuant to G.S. 15A-266.3A."

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

9 "(4) "DNA Sample" in this Article means a ~~blood, buccal, or any other sample~~
10 sample of blood, saliva, hair, body tissue, or biological material that is
11 appropriate for DNA testing or analysis and that is submitted to the SBI
12 Laboratory pursuant to this Article, provided by any person convicted of
13 offenses covered by this Article or submitted to the SBI Laboratory for
14 analysis pursuant to a criminal investigation."

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

16 "(a) Unless a DNA sample has previously been obtained by lawful process and a record
17 stored in the State DNA 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
19 any provision 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 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, ~~G.S. 15A-1321 before December~~
33 ~~1, 2003~~, shall ~~have~~ provide a DNA sample ~~drawn~~ before parole or release
34 from the penal system or before release from the mental health facility. This
35 subdivision is retroactive and applies to (i) any person convicted of any of
36 these offenses, regardless of the date of the conviction, or (ii) any person
37 acquitted of any of these offenses by reason of insanity.

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

39 (1) All felonies.

40 (2) ~~G.S. 14-32.1 — Assaults on handicapped persons.~~

41 (3) ~~G.S. 14-277.3A or former~~ Former G.S. 14-277.3 – Stalking.

42 (4) ~~G.S. 14-27.5A — Sexual battery.~~

43 (5) All offenses described in G.S. 15A-266.3A."

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

45 **"§ 15A-266.5. Tests to be performed on ~~blood sample~~ DNA sample.**

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

47 (1) To analyze and type the genetic markers contained in or derived from the
48 DNA.

49 (2) For law enforcement identification purposes.

50 (3) For research and administrative purposes, including:

- 1 a. Development of a population database when personal identifying
2 information is removed.
- 3 b. To support identification research and protocol development of
4 forensic DNA analysis methods.
- 5 c. For quality control purposes.
- 6 d. To assist in the recovery or identification of human remains from
7 mass disasters or for other humanitarian purposes, including
8 identification of missing persons.

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

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

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

23 **"§ 15A-266.6. Procedures for ~~withdrawal of blood sample for DNA analysis.~~**

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

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

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

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

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

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

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

12 (a) The SBI shall:

13 (1) Adopt rules governing the procedures to be used in the submission,
14 identification, analysis, and storage of DNA samples and typing results of
15 DNA samples submitted under this Article. These procedures shall also
16 include quality assurance guidelines to insure that DNA identification
17 records meet audit standards for laboratories which submit DNA records to
18 the State DNA Database.

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

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

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

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

27 "**§ 15A-266.8. DNA database exchange.**

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

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

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

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

3 **"§ 15A-502A. DNA sample upon arrest.**

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

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

8 **"§ 15A-1382. Reports of disposition; ~~fingerprints.~~fingerprints and DNA samples.**

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

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

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

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

25 **"§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

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

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

32 **SECTION 12.** G.S. 7A-304(a) reads as rewritten:

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

39 ...

40 (9) For the support and services of the State Bureau of Investigation DNA
41 Database and DNA Databank, a tax of two dollars (\$2.00), to be remitted to
42 the State Treasurer. Notwithstanding the provisions in subsection (e) of this
43 section, this tax shall not apply to infractions."

44 **SECTION 13.** Section 12 of this act becomes effective October 1, 2010, and
45 applies to taxes imposed or collected on or after that date, except that in misdemeanor cases
46 disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of
47 guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2) in which the
48 citation or other criminal process was issued before that date, the cost shall be the lesser of the
49 cost specified in G.S. 7A-304(a), as amended by this act, or the cost specified in the notice
50 portion of the defendant's or respondent's copy of the citation or other criminal process, if any

1 costs are specified in that notice. The remainder of this act becomes effective December 1,
2 2010.