

Article 13.

DNA Database and Databank.

§ 15A-266. Short title.

This Article may be cited as the DNA Database and Databank Act of 1993. (1993, c. 401, s. 1.)

§ 15A-266.1. Policy.

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of felonies or violent crimes against the person. Identification, detection, and exclusion are facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters. (1993, c. 401, s. 1; 2003-376, s. 1; 2009-203, s. 1.)

§ 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) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(f) or (g).
- (1a) "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 (NDIS) administered and operated by the Federal Bureau of Investigation.
- (1b) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect.
- (1c) "Crime Laboratory" [means] the North Carolina State Crime Laboratory of the Department of Justice.
- (1d) "Criminal Justice Agency" means an agency or institution of a federal, State, or local government, other than the office of the public defender, that performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.
- (1e) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution.
- (2) "DNA" means deoxyribonucleic acid. DNA is located in the 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 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 analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

- (4) "DNA Sample" means blood, cheek swabs, or any biological sample containing cells provided by any person with respect to offenses covered by this Article or submitted to the State Crime Laboratory pursuant to this Article for analysis pursuant to a criminal investigation or storage or both.
- (5) "FBI" means the Federal Bureau of Investigation.
- (5a) "NDIS" means the National DNA Index System that is the national DNA database system of DNA records that meet federal quality assurance and privacy standards.
- (6) Repealed by Session Laws 2013-360, s. 17.6(i), effective July 1, 2013.
- (7) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.
- (8) "State DNA Database" means the Crime Laboratory's DNA identification record system to support law enforcement. It is administered by the Crime Laboratory and provides DNA records to the FBI for storage and maintenance in CODIS. The Crime Laboratory's DNA Database system is the collective capability provided by computer software and procedures administered by the Crime Laboratory to store and maintain DNA records related to: forensic casework; convicted offenders and arrestees required to provide a DNA sample under this Article; persons required to register as sex offenders under G.S. 14-208.7; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies. (1993, c. 401, s. 1; 2009-203, s. 2; 2010-94, s. 2; 2011-19, s. 5; 2013-360, s. 17.6(i); 2014-100, s. 17.1(cc).)

§ 15A-266.3. Establishment of State DNA database and databank.

There is established under the administration of the Crime Laboratory, the State DNA Database and State DNA Databank. The Crime Laboratory shall provide DNA records to the FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA Databank shall serve as the repository for DNA samples obtained pursuant to this Article. The State DNA Database shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory and computer equipment, supplies and computer platform and software. The State DNA Database shall have the capability provided by computer software and procedures administered by the Crime Laboratory to store and maintain DNA records related to all of the following:

- (1) Crime scene evidence and forensic casework.
- (2) Arrestees, offenders, and persons found not guilty by reason of insanity, who are required to provide a DNA sample under this Article.
- (3) Persons required to register as sex offenders under G.S. 14-208.7.
- (4) Unidentified persons or body parts.
- (5) Missing persons.

- (6) Relatives of missing persons.
- (7) Anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database, for use by criminal justice agencies. (1993, c. 401, s. 1; 2010-94, s. 3; 2013-360, s. 17.6(f).)

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

(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 has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (f) or (g) of this section.

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

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

(d) After taking a DNA sample from an arrested person required to provide a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (h), (i), (j), (k), and (l) of this section. The Department of Justice shall provide the written notice required by this subsection.

(e) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the Crime Laboratory in the State DNA Databank pursuant to this Article.

(f) This section applies to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

- (1) G.S. 14-16.6(b), Assault with a deadly weapon on executive, legislative, or court officer; and G.S. 14-16.6(c), Assault inflicting serious bodily injury on executive, legislative, or court officer.
- (1a) G.S. 14-17, First and Second Degree Murder.
- (2) G.S. 14-18, Manslaughter.
- (2a) Any felony offense in Article 6A, Unborn Victims.

- (3) Any offense in Article 7B, Rape and Other Sex Offenses.
- (4) G.S. 14-28, Malicious castration; G.S. 14-29, Castration or other maiming without malice aforethought; G.S. 14-30, Malicious maiming; G.S. 14-30.1, Malicious throwing of corrosive acid or alkali; G.S. 14-31, Maliciously assaulting in a secret manner; G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Aggravated assault or assault and battery on an individual with a disability; G.S. 14-32.2(a) when punishable pursuant to G.S. 14-32.2(b)(1), Patient abuse and neglect, intentional conduct proximately causes death; G.S. 14-32.3(a), Domestic abuse of disabled or elder adults resulting in injury; G.S. 14-32.4, Assault inflicting serious bodily injury or injury by strangulation; G.S. 14-33.2, Habitual misdemeanor assault; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.9, Discharging a firearm from within an enclosure; and G.S. 14-34.10, Discharge firearm within enclosure to incite fear.
- (5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.
- (5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.
- (6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54(a1), Breaking or entering buildings with intent to terrorize or injure; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.
- (7) Any offense in Article 15, Arson.
- (8) G.S. 14-87, Armed robbery; Common law robbery punishable pursuant to G.S. 14-87.1; and G.S. 14-88, Train robbery.
- (8a) G.S. 14-163.1(a1), Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal willfully killing the animal.
- (9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
- (10) G.S. 14-196.3, Cyberstalking.
- (10a) G.S. 14-202, Secretly peeping into room occupied by another person.
- (10b) G.S. 14-258.2, Possession of dangerous weapon in prison resulting in bodily injury or escape; G.S. 14-258.3, Taking of hostage, etc., by prisoner; and G.S. 14-258.4, Malicious conduct by prisoner.
- (11) G.S. 14-277.3A, Stalking.

- (12) G.S. 14-288.9, Assault on emergency personnel with a dangerous weapon or substance.
- (13) G.S. 14-288.21, Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; and G.S. 14-288.22, Unlawful use of a nuclear, biological, or chemical weapon of mass destruction.
- (14) G.S. 14-318.4(a), Child abuse inflicting serious injury and G.S. 14-318.4(a3), Child abuse inflicting serious bodily injury.
- (15) G.S. 14-360(a1), Cruelty to animals; maliciously kill by intentional deprivation of necessary sustenance; and G.S. 14-360(b), Cruelty to animals; maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill.
- (16) G.S. 14-401.22(e), Attempt to conceal evidence of non-natural death by dismembering or destroying remains.

(g) This section also applies to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (f) of this section.

(h) The Crime Laboratory shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (i) of this section:

- (1) As to the charge, or all charges, resulting from the arrest upon which a DNA sample is required under this section, a court or the district attorney has taken action resulting in any one of the following:
 - a. The charge has been dismissed.
 - b. The person has been acquitted of the charge.
 - c. The defendant is convicted of a lesser-included misdemeanor offense that is not an offense included in subsection (f) or (g) of this section.
 - d. No charge was filed within the statute of limitations, if any.
 - e. No conviction has occurred, at least three years has passed since the date of arrest, and no active prosecution is occurring.
- (2) The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

(i) Prior to June 1, 2012, upon the occurrence of one of the events in sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, the defendant or the defendant's counsel shall provide the prosecuting district attorney with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed. On or after June 1, 2012, upon the occurrence of one of the events in sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, no request form shall be required and the prosecuting district attorney shall initiate the procedure provided in subsection (j) of this section.

(j) Prior to June 1, 2012, within 30 days of the receipt of the form required by subsection (i) of this section or the occurrence of one of the events in sub-subdivision a.,

b., or c. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30 days of the occurrence of one of the events in subdivision (1) of subsection (h) of this section, the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this section, and if so, shall do all of the following:

- (1) Verify and indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.
- (2) Include the last known address of the defendant, as reflected in the court files, on the verification form.
- (3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.
- (4) Transmit the verification form to the Crime Laboratory.

(k) Within 90 days of receipt of the verification form, the Crime Laboratory shall do all of the following:

- (1) Determine whether the requirement of subdivision (2) of subsection (h) of this section has been met.
- (2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (h) of this section.
- (3) Mail to the defendant, at the address specified in the verification form, a notice doing either of the following:
 - a. Documenting expunction of the DNA record and destruction of the DNA sample.
 - b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (h) of this section.

(l) The defendant may file a motion with the court to review the denial of the defendant's request or the failure of either the district attorney or the Crime Laboratory to act within the prescribed time period.

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

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

(o) The Crime Laboratory shall adopt procedures to comply with this section. (2010-94, s. 4; 2013-171, s. 9; 2013-360, s. 17.6(f), (j); 2015-181, s. 47; 2015-241, s. 17.3(a); 2018-47, s. 4(n).)

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

(a) Unless a DNA sample has previously been obtained by lawful process and a record stored in the State DNA Database, and that record and sample have not been expunged pursuant to any provision of law, a person:

- (1) Who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and

committed to a mental health facility in accordance with G.S. 15A-1321, shall provide a DNA sample upon intake to jail, prison, or the mental health facility. In addition, every person convicted of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence.

(2) Who has been convicted and incarcerated as a result of a conviction of one or more of the crimes listed in subsection (b) of this section, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with G.S. 15A-1321, shall provide a DNA sample before parole or release from the penal system or before release from the mental health facility.

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

(1) All felonies.

(2) G.S. 14-32.1 – Assaults on individuals with a disability.

(3) Former G.S. 14-277.3 – Stalking.

(4) Repealed by Session Laws 2010-94, s. 5, effective February 1, 2011.

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

(1993, c. 401, s. 1; 2001-487, s. 46; 2003-376, s. 2; 2005-130, s. 2; 2009-58, s. 2; 2010-94, s. 5; 2018-47, s. 4(o).)

§ 15A-266.5. Tests to be performed on DNA sample.

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

(1) To analyze and type only the genetic markers that are used for identification purposes contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

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

(c) The Crime Laboratory shall report annually to the Joint Legislative Oversight Committee on Justice and Public Safety, on or before September 1, with information for the previous fiscal year, which shall include: a summary of the operations and expenditures relating to the DNA Database and DNA Databank; the number of DNA records from arrestees entered; the number of DNA records from arrestees that have been expunged; and the number of DNA arrestee matches or hits that occurred with an unknown sample, and how many of those have led to an arrest and conviction; and how many letters notifying

defendants that a record and sample have been expunged, along with the number of days it took to complete the expunction and notification process, from the date of the receipt of the verification form from the State.

(d) The Department of Justice, in consultation with the Administrative Office of the Courts and the Conference of District Attorneys, shall study, develop, and recommend an automated procedure to facilitate the process of expunging DNA samples and records taken pursuant to G.S. 15A-266.3A, and shall report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Justice and Public Safety, and the Courts Commission, on or before February 1, 2011. (1993, c. 401, s. 1; 2010-94, s. 6; 2011-291, s. 2.3; 2013-360, s. 17.6(f); 2015-241, s. 17.2.)

§ 15A-266.6. Procedures for obtaining DNA sample for analysis; refusal to provide sample.

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

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

(c) The Crime Laboratory shall provide the materials, supplies, and postage prepaid envelopes necessary to obtain a DNA sample from a person required to provide a DNA sample pursuant to this Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. Any DNA sample obtained pursuant to this

Article, other than a DNA sample obtained from a person who is incarcerated, shall be taken using the materials and supplies provided by the Crime Laboratory. (1993, c. 401, s. 1; 2003-376, s. 3; 2010-94, s. 7; 2013-360, s. 17.6(f).)

§ 15A-266.7. Procedures for conducting DNA analysis of DNA sample.

(a) The Crime Laboratory shall:

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

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

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

(c) Records of testing shall be retained on file at the Crime Laboratory. (1993, c. 401, s. 1; 2010-94, s. 8; 2013-360, s. 17.6(f).)

§ 15A-266.8. DNA database exchange.

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

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

(c) The Crime Laboratory shall create a separate population database comprised of DNA samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the Crime Laboratory from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the Crime Laboratory deems necessary to assist the Crime Laboratory with

statistical analysis of the Crime Laboratory's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system. (1993, c. 401, s. 1; 2010-94, s. 9; 2013-360, s. 17.6(f).)

§ 15A-266.9. Cancellation of authority to exchange DNA records.

The Crime Laboratory is authorized to revoke the right of a forensic DNA laboratory within the State to exchange DNA identification records with federal, State, or local criminal justice agencies if the required control and privacy standards specified by the Crime Laboratory for the State DNA Database are not met by these agencies. (1993, c. 401, s. 1; 2013-360, s. 17.6(f).)

§ 15A-266.10: Repealed by Session Laws 2001-282, s. 3.

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

(a) Any person who has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a Class H felony.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a Class H felony. (1993, c. 401, s. 1; 1994, Ex. Sess., c. 14, s. 15; 2010-94, s. 10.)

§ 15A-266.12. Confidentiality of records.

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

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

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

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

(e) DNA records and DNA samples submitted to the Crime Laboratory may only be released for the following authorized purposes:

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

- (2) For criminal defense and appeal purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which such defendant is charged or was convicted.
- (3) If personally identifiable information is removed to local, State, or federal law enforcement agencies for forensic validation studies, forensic protocol development or quality control purposes, and for establishment or maintenance of a population statistics database.

(f) In order to maintain the computer system security of the Crime Laboratory DNA database program, the computer software and database structures used by the Crime Laboratory to implement this Article are confidential. (1993, c. 401, s. 1; 2003-376, s. 4; 2010-94, s. 11; 2013-360, s. 17.6(f).)

§ 15A-267. Access to DNA samples from crime scene.

(a) A criminal defendant shall have access before trial to the following:

- (1) Any DNA analyses performed in connection with the case in which the defendant is charged.
- (2) Any biological material, that has not been DNA tested, that was collected from the crime scene, the defendant's residence, or the defendant's property.
- (3) A complete inventory of all physical evidence collected in connection with the investigation.

(b) Access as provided for in subsection (a) of this section shall be governed by G.S. 15A-902 and G.S. 15A-952.

(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court shall order the Crime Laboratory or any approved vendor that meets Crime Laboratory contracting standards to perform DNA testing and, if the data meets NDIS criteria, order the Crime Laboratory to search and/or upload to CODIS any profiles obtained from the testing upon a showing of all of the following:

- (1) That the biological material is relevant to the investigation.
- (2) That the biological material was not previously DNA tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.
- (3) That the testing is material to the defendant's defense.

(d) The defendant shall be responsible for bearing the cost of any further testing and comparison of the biological materials, including any costs associated with the testing and comparison by the Crime Laboratory in accordance with this section, unless the court has determined the defendant is indigent, in which event the State shall bear the costs. (2001-282, s. 4; 2007-539, s. 1; 2009-203, s. 3; 2013-360, s. 17.6(f).)

§ 15A-268. Preservation of biological evidence.

(a) As used in this section, the term "biological evidence" includes the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that

material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence.

(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a custodial agency shall preserve any physical evidence, regardless of the date of collection, that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The Crime Laboratory shall promulgate and publish minimum guidelines that meet the requirements for retention and preservation of biological evidence under subsection (a1) of this section. Guidelines shall be published no later than January 1, 2010, and shall be reviewed and updated biennially thereafter. Law enforcement agencies and the Conference of Clerks of Superior Court shall ensure the guidelines are distributed to all employees with responsibility for maintaining custody of evidence.

(a3) When physical evidence is offered or admitted into evidence in a criminal proceeding of the General Court of Justice, the presiding judge shall inquire of the State and defendant as to the identity of the collecting agency of the evidence and whether the evidence in question is reasonably likely to contain biological evidence and if that biological evidence is relevant to establishing the identity of the perpetrator in the case. If either party asserts that the evidence in question may have biological evidentiary value, and the court so finds, the court shall instruct that the evidence be so designated in the court's records and that the evidence be preserved pursuant to the requirements of this section.

(a4) If evidence has been designated by the court as biological evidence pursuant to subsection (a3) of this section, the clerk of superior court that takes custody of evidence pursuant to the rules of practice and procedure for the superior and district courts as adopted by the Supreme Court pursuant to G.S. 7A-34 shall preserve such evidence consistent with subsection (a1) of this section. Upon conclusion of the clerk's role as custodian, as provided in the applicable rules of practice, the clerk shall return such evidence to the collecting agency, as determined in subsection (a3) of this section, in a manner that ensures the chain of custody is maintained and documented.

(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court hearing, which may include any other hearing associated with the disposition of the case.

(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

- (1) For conviction resulting in a sentence of death, until execution.
- (2) For conviction resulting in a sentence of life without parole, until the death of the convicted person.
- (3) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is

imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

- (4) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.
- (5) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of this subsection may dispose of the evidence in accordance with the rules of the agency.
- (6) Notwithstanding the retention requirements in subdivisions (1) through (5) of this subsection, at any time after collection and prior to or at the time of disposition of the case at the trial court level, if the evidence collected as part of the criminal investigation is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner, the State may petition the court for retention of samples of the biological evidence in lieu of the actual physical evidence. After giving any defendant charged in connection with the case an opportunity to be heard, the court may order that the collecting agency take reasonable measures to remove or preserve for retention portions of evidence likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with Crime Laboratory minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence.

(a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that is in the custodial agency's custody. If the evidence was destroyed through court order or other written directive, the custodial agency shall provide the defendant with a copy of the court order or written directive.

(b) The custodial agency required to preserve evidence pursuant to subsection (a1) of this section may dispose of the evidence prior to the expiration of the period of time described in subsection (a6) of this section if all of the following conditions are met:

- (1) The custodial agency sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.
 - (1a) The custodial agency has determined that it has no duty to preserve the evidence under G.S. 15A-1471.
- (2) The district attorney gave to each of the following persons written notification of the intent of the custodial agency to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's counsel of record for that case, and the Office of Indigent Defense Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written

notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

- (3) The written notification from the district attorney specified the following:
- a. That the custodial agency would destroy the evidence collected in connection with the case unless the custodial agency received a written request that the evidence not be destroyed.
 - b. The address of the custodial agency where the written request was to be sent.
 - c. That the written request from the defendant, or his or her representative, must be received by the custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.
 - d. That the written request must ask that the evidence not be destroyed or disposed of for one of the following reasons:
 1. The case is currently on appeal.
 2. The case is currently in postconviction proceedings.
 3. The defendant will file a motion for DNA testing pursuant to G.S. 15A-269 within 180 days of the postmark of the defendant's response to the district attorney's written notification of the custodial agency's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the custodial agency.
 4. The case has been referred to the North Carolina Innocence Inquiry Commission pursuant to Article 92 of Chapter 15A of the General Statutes.
- (4) The custodial agency did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the custodial agency that intends to dispose of the sample of evidence. The custodial agency may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a hearing held in response to a defendant's written request that the evidence not be destroyed in response to notice pursuant to subsection (b) of this section, the court may enter an order authorizing the custodial agency to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

- (1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law; or
- (2) Repealed by Session Laws 2009-203, s. 4, effective December 1, 2009.
- (3) May have value for biological analysis but is of a size, bulk, or physical character as to render retention impracticable or should be returned to its rightful owner.

(e) The court order allowing the disposition of the evidence pursuant to subdivision (d)(3) of this section shall require the custodial agency to return such evidence to the collecting agency. The collecting agency shall take reasonable measures to remove or preserve portions of evidence likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with Crime Laboratory minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence. The court may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The custodial agency shall not dispose of the evidence while the appeal is pending.

(g) If an entity is asked to produce evidence that is required to be preserved under the provisions of this section and cannot produce the evidence, the chief evidence custodian of the custodial agency shall provide an affidavit in which he or she describes, under penalty of perjury, the efforts taken to locate the evidence and affirms that the evidence could not be located. If the evidence that is required to be preserved pursuant to this section has been destroyed, the court may conduct a hearing to determine whether obstruction of justice and contempt proceedings are in order. If the court finds the destruction violated the defendant's due process rights, the court shall order an appropriate remedy, which may include dismissal of charges.

(h) All records documenting the possession, control, storage, and destruction of evidence related to a criminal investigation or prosecution of an offense referenced in subdivision (1), (2), (3), or (4) of subsection (a6) of this section shall be retained.

(i) Whoever knowingly and intentionally destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section, with the intent to impair the integrity of that evidence, prevent that evidence from being subjected to DNA testing, or prevent production or use of that evidence in an official proceeding, shall be punished as follows:

- (1) If the evidence is for a noncapital crime, then a violation of this subsection is a Class I felony.
- (2) If the evidence is for a crime of first degree murder, then a violation of this subsection is a Class H felony. (2001-282, s. 4.; 2007-539, s. 2; 2009-203, s. 4; 2009-570, s. 30(a), (b); 2012-7, ss. 1-3; 2013-360, s. 17.6(f); 2015-247, ss. 10(a), (b).)

§ 15A-269. Request for postconviction DNA testing.

(a) A defendant may make a motion before the trial court that entered the judgment of conviction against the defendant for performance of DNA testing and, if testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and/or uploaded to CODIS if the biological evidence meets all of the following conditions:

- (1) Is material to the defendant's defense.
- (2) Is related to the investigation or prosecution that resulted in the judgment.
- (3) Meets either of the following conditions:
 - a. It was not DNA tested previously.
 - b. It was tested previously, but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for DNA testing and, if testing complies with FBI requirements, the run of any profiles obtained from the testing, upon its determination that:

- (1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;
- (2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the defendant; and
- (3) The defendant has signed a sworn affidavit of innocence.

(b1) If the court orders DNA testing, such testing shall be conducted by a Crime Laboratory-approved testing facility, mutually agreed upon by the petitioner and the State and approved by the court. If the parties cannot agree, the court shall designate the testing facility and provide the parties with reasonable opportunity to be heard on the issue.

(c) In accordance with rules adopted by the Office of Indigent Defense Services, the court shall appoint counsel for the person who brings a motion under this section if that person is indigent. If the petitioner has filed pro se, the court shall appoint counsel for the petitioner in accordance with rules adopted by the Office of Indigent Defense Services upon a showing that the DNA testing may be material to the petitioner's claim of wrongful conviction.

(d) The defendant shall be responsible for bearing the cost of any DNA testing ordered under this section unless the court determines the defendant is indigent, in which event the State shall bear the costs.

(e) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that DNA testing is necessary in the interests of justice, the court shall order a delay of the proceedings or execution of the sentence pending the DNA testing.

(f) Upon receipt of a motion for postconviction DNA testing, the custodial agency shall inventory the evidence pertaining to that case and provide the inventory list, as well as any documents, notes, logs, or reports relating to the items of physical evidence, to the prosecution, the petitioner, and the court.

(g) Upon receipt of a motion for postconviction DNA testing, the State shall, upon request, reactivate any victim services for the victim of the crime being investigated during the reinvestigation of the case and pendency of the proceedings.

(h) Nothing in this Article shall prohibit a convicted person and the State from consenting to and conducting postconviction DNA testing by agreement of the parties, without filing a motion for postconviction testing under this Article. (2001-282, s. 4; 2007-539, s. 3; 2009-203, s. 5; 2011-326, s. 12(d); 2013-360, s. 17.6(k).)

§ 15A-270. Post-test procedures.

(a) Notwithstanding any other provision of law, upon receiving the results of the DNA testing conducted under G.S. 15A-269, the court shall conduct a hearing to evaluate the results and to determine if the results are unfavorable or favorable to the defendant.

(b) If the results of DNA testing conducted under this section are unfavorable to the defendant, the court shall dismiss the motion and, in the case of a defendant who is not indigent, shall assess the defendant for the cost of the testing.

(c) If the results of DNA testing conducted under this section are favorable to the defendant, the court shall enter any order that serves the interests of justice, including an order that does any of the following:

- (1) Vacates and sets aside the judgment.
- (2) Discharges the defendant, if the defendant is in custody.
- (3) Resentences the defendant.
- (4) Grants a new trial. (2001-282, s. 4.)

§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal. The court shall appoint counsel in accordance with rules adopted by the Office of Indigent Defense Services upon a finding of indigency. (2007-539, s. 4; 2009-203, s. 6; 2011-326, s. 12(e).)