

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 165

Short Title: DNA Sample on Arrest.

(Public)

Sponsors: Senators Rand; Albertson, Allran, Ballance, Ballantine, Carpenter, Carrington, Carter, Cochrane, Cooper, Dalton, Dannelly, East, Forrester, Foxx, Garrou, Garwood, Hagan, Hartsell, Horton, Kerr, Lucas, Martin of Pitt, Martin of Guilford, Metcalf, Miller, Moore, Reeves, Robinson, Rucho, Shaw of Cumberland, Shaw of Guilford, Soles, Warren, Webster, Weinstein, and Wellons.

Referred to: Judiciary I.

February 23, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR A FELONY AND STORED IN THE STATE DNA DATATBASE AND TO ESTABLISH PILOT PROGRAMS TO IMPLEMENT THIS PROCEDURE.

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) 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. 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. The DNA sample must be taken by a qualified member of the health profession. No unreasonable or unnecessary force shall be used to obtain the DNA sample.

1 (b) The DNA record of identification characteristics resulting from the DNA
2 testing and the DNA sample itself shall be stored and maintained by the SBI in the State
3 DNA Databank pursuant to Article 13 of Chapter 15A of the General Statutes.

4 (c) The following definitions apply in this section:

5 (1) 'DNA' is as defined in G.S. 15A-266.2(2).

6 (2) 'DNA record' is as defined in G.S. 15A-266.2(3).

7 (3) 'DNA sample' means a sample of body tissue, blood, or other bodily
8 fluid that is appropriate for DNA testing or analysis by the SBI
9 Laboratory pursuant to Article 13 of Chapter 15A of the General
10 Statutes. The term includes a DNA blood sample as defined in G.S.
11 15A-266.2(4) and a DNA fluid or tissue sample as defined in G.S. 15A-
12 266.2(4a).

13 (4) 'SBI' means the State Bureau of Investigation."

14 Section 2. G.S. 15A-266.2 reads as rewritten:

15 **"§ 15A-266.2. Definitions.**

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

18 (1) "CODIS" means the FBI's national DNA identification index system that
19 allows the storage and exchange of DNA records submitted by State and
20 local forensic DNA laboratories. The term "CODIS" is derived from
21 Combined DNA Index System.

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

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

35 (4) "DNA Blood Sample" in this Article means a blood sample provided by
36 any person convicted of offenses covered by this Article or submitted to
37 the SBI Laboratory for analysis pursuant to a criminal investigation.

38 (4a) "DNA Fluid or Tissue Sample" in this Article means a sample of saliva,
39 hair, body tissue, or bodily fluid other than blood that is provided by a
40 person arrested for a felony and submitted for DNA analysis as required
41 by G.S. 15A-502A.

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

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

5 (7) "State DNA Database" means the SBI's DNA identification record
6 system to support law enforcement. It is administered by the SBI and
7 provides DNA records to the FBI for storage and maintenance in
8 CODIS. The SBI's DNA Database system is the collective capability
9 provided by computer software and procedures administered by the SBI
10 to store and maintain DNA records related to forensic casework, to
11 convicted offenders required to provide a DNA sample under this
12 Article, and to anonymous DNA records used for research or quality
13 control.

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

16 Section 3. G.S. 15A-1266.5 reads as rewritten:

17 "**§ 15A-266.5. Tests to be performed on ~~blood sample.~~ DNA blood sample or DNA**
18 **fluid or tissue sample.**

19 (a) The tests to be performed on each DNA blood sample and each DNA fluid or
20 tissue sample are:

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

23 (2) For law enforcement identification purposes.

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

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

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

29 c. For quality control purposes.

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

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

36 Section 4. The catch line of G.S. 15A-266.7 reads as rewritten:

37 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood sample.~~ blood, other**
38 **bodily fluid, or tissue samples.**"

39 Section 5. G.S. 15A-266.8 reads as rewritten:

40 "**§ 15A-266.8. DNA database exchange.**

41 (a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or
42 to contract out the DNA typing analysis to a qualified DNA laboratory that meets the
43 guidelines as established by the SBI, classify, and file the DNA record of identification

1 characteristic profiles of DNA samples submitted pursuant to G.S. 15A-266.7 and G.S.
2 15A-502A and to make such information available as provided in this section. The SBI
3 may contract out DNA typing analysis to a qualified DNA laboratory that meets
4 guidelines as established by the SBI. The results of the DNA profile of individuals in the
5 State Database shall be made available to local, State, or federal law enforcement
6 agencies, approved crime laboratories which serve these agencies, or the district
7 attorney's office upon written or electronic request and in furtherance of an official
8 investigation of a criminal offense. These records shall also be available upon receipt of
9 a valid court order directing the SBI to release these results to appropriate parties not
10 listed above, when the court order is signed by a superior court judge after a hearing. The
11 SBI shall maintain a file of such court orders.

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

15 (c) The SBI shall create a separate population database comprised of blood
16 samples obtained under this Article, after all personal identification is removed. Nothing
17 shall prohibit the SBI from sharing or disseminating population databases with other law
18 enforcement agencies, crime laboratories that serve them, or other third parties the SBI
19 deems necessary to assist the SBI with statistical analysis of the SBI's population
20 databases. The population database may be made available to and searched by other
21 agencies participating in the CODIS system."

22 Section 6. G.S. 15A-266.10(a) reads as rewritten:

23 "(a) Any person whose DNA record or profile has been included in the State
24 Database and whose DNA sample is stored in the State Databank may apply for
25 expungement on the grounds that the felony arrest or conviction that resulted in the
26 inclusion of the person's DNA record or profile in the State Database or the inclusion of
27 the person's DNA sample in the State Databank has been reversed and the case dismissed.
28 The person, either individually or through an attorney, may apply to the court for
29 expungement of the record as provided in G.S. 15A-146. A copy of the application for
30 expungement shall be served on the district attorney for the judicial district in which the
31 felony conviction was obtained not less than 20 days prior to the date of the hearing on
32 the application. A certified copy of the order reversing and dismissing the conviction
33 shall be attached to an order of expungement."

34 Section 7. G.S. 15A-1382 reads as rewritten:

35 "**§ 15A-1382. Reports of disposition; ~~fingerprints~~-fingerprints and DNA samples.**

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

1 (b) When a defendant is found guilty of any felony, regardless of the class of
2 felony, a report of the disposition of the charges shall be made to the State Bureau of
3 Investigation on a form supplied by the State Bureau of Investigation within 60 days
4 following disposition. If a convicted felon was not fingerprinted pursuant to G.S. 15A-
5 502 prior to the disposition of the case, his fingerprints shall be taken and submitted to
6 the State Bureau of Investigation along with the report of the disposition of the charges
7 on forms supplied by the State Bureau of Investigation.

8 (c) If a convicted felon did not have a DNA sample taken pursuant to G.S. 15A-
9 502A prior to the disposition of the case, then a DNA sample shall be taken from the
10 felon in accordance with Article 13 of this Chapter and submitted to the State Bureau of
11 Investigation along with the report of the disposition of the charges on forms supplied by
12 the State Bureau of Investigation as provided by Article 13 of this Chapter."

13 Section 8. G.S. 7A-608.1 reads as rewritten:

14 "**§ 7A-608.1. Fingerprinting and DNA sample from juvenile transferred to superior**
15 **court.**

16 (a) When jurisdiction over a juvenile is transferred to the superior court, the
17 juvenile shall be fingerprinted and his fingerprints shall be sent to the State Bureau of
18 Investigation.

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

21 Section 9. By November 1, 1999, the Administrative Office of the Courts in
22 cooperation with the Department of Justice shall develop a pilot program to implement
23 this act by November 1, 1999. The Administrative Office of the Courts after consulting
24 with the Department of Justice shall designate three counties to participate in the pilot
25 program.

26 Section 10. There is appropriated from the General Fund to the Administrative
27 Office of the Courts the sum of two hundred fifty thousand dollars (\$250,000) for the
28 1999-2000 fiscal year and the sum of two hundred fifty thousand dollars (\$250,000) for
29 the 2000-2001 fiscal year to implement the pilot program established in Section 9 of this
30 act.

31 Section 11. Sections 9 and 11 of this act are effective when it becomes law.
32 Section 10 of this act becomes effective July 1, 1999. The remainder of this act becomes
33 effective December 1, 1999, and applies to arrests made on or after that date in those
34 counties designated by the Administrative Office of the Courts as participants in the pilot
35 program.