

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

2

SENATE BILL 165
Appropriations/Base Budget Committee Substitute Adopted 7/7/00

Short Title: DNA Sample on Arrest.

(Public)

Sponsors:

Referred to:

February 23, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR CERTAIN FELONIES AND STORED IN THE STATE DNA DATABASE, TO REQUIRE THAT A PORTION OF THE EVIDENCE THAT CONTAINS DNA AND THAT IS COLLECTED IN A CRIMINAL INVESTIGATION BE RETAINED BY LAW ENFORCEMENT OFFICIALS FOR FIVE YEARS AFTER PROSECUTION, 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 any of the following felony offenses must provide his or her DNA sample pursuant to this section for DNA analysis and testing:

(1) Any Class A through E felony unless the offense is a violation of Chapter 90 of the General Statutes.

(2) Any felony that involves assaultive behavior that results in serious injury or death.

1 (3) Any felony that is a sexual offense.

2 (4) Any felony that is committed against a juvenile, a disabled person, or an
3 elder adult.

4 (b) It is the duty of the arresting law enforcement officer to obtain the arrested
5 person's DNA sample and to forward the DNA sample to the appropriate laboratory for
6 DNA analysis and testing. The DNA sample must be taken by a qualified member of the
7 health profession. No unreasonable or unnecessary force shall be used to obtain the DNA
8 sample.

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

13 (d) Any law enforcement agency that, in the course of a criminal investigation,
14 collects evidence containing DNA shall retain a portion of the evidence sufficient to
15 extract a DNA sample for five years after the conclusion of the prosecution of the crime.
16 At the end of that five-year period of time, the portion of evidence retained in compliance
17 with this subsection may be destroyed unless otherwise provided by law.

18 (e) The following definitions apply in this section:

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

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

21 (3) 'DNA sample' means a sample of body tissue, blood, or other bodily
22 fluid that is appropriate for DNA testing or analysis by the SBI
23 Laboratory pursuant to Article 13 of Chapter 15A of the General
24 Statutes. The term includes a DNA blood sample as defined in G.S.
25 15A-266.2(4) and a DNA fluid or tissue sample as defined in G.S. 15A-
26 266.2(4a).

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

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

29 **"§ 15A-266.2. Definitions.**

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

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

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

40 (3) "DNA Record" means DNA identification information stored in the
41 State DNA Database or CODIS for the purpose of generating
42 investigative leads or supporting statistical interpretation of DNA test
43 results. The DNA record is the result obtained from the DNA typing

1 tests. The DNA record is comprised of the characteristics of a DNA
2 sample which are of value in establishing the identity of individuals.
3 The results of all DNA identification tests on an individual's DNA
4 sample are also collectively referred to as the DNA profile of an
5 individual.

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

9 (4a) "DNA Fluid or Tissue Sample" in this Article means a sample of saliva,
10 hair, body tissue, or bodily fluid other than blood that is provided by a
11 person arrested for a felony and submitted for DNA analysis as required
12 by G.S. 15A-502A.

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

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

18 (7) "State DNA Database" means the SBI's DNA identification record
19 system to support law enforcement. It is administered by the SBI and
20 provides DNA records to the FBI for storage and maintenance in
21 CODIS. The SBI's DNA Database system is the collective capability
22 provided by computer software and procedures administered by the SBI
23 to store and maintain DNA records related to forensic casework, to
24 convicted offenders required to provide a DNA sample under this
25 Article, and to anonymous DNA records used for research or quality
26 control.

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

29 Section 3. G.S. 15A-266.5 reads as rewritten:

30 "**§ 15A-266.5. Tests to be performed on ~~blood sample.~~ DNA blood sample or DNA**
31 **fluid or tissue sample.**

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

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

36 (2) For law enforcement identification purposes.

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

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

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

42 c. For quality control purposes.

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

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

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

8 "**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood sample.~~ blood
9 sample or other bodily fluid or tissue samples."**

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

11 "**§ 15A-266.8. DNA database exchange.**

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

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

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

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

37 "(a) Any person whose DNA record or profile has been included in the State
38 Database and whose DNA sample is stored in the State Databank may apply for
39 expungement on the grounds that the felony arrest or conviction that resulted in the
40 inclusion of the person's DNA record or profile in the State Database or the inclusion of
41 the person's DNA sample in the State Databank has been reversed and the case dismissed.
42 The person, either individually or through an attorney, may apply to the court for
43 expungement of the record as provided in G.S. 15A-146. A copy of the application for

1 expungement shall be served on the district attorney for the judicial district in which the
2 felony conviction was obtained not less than 20 days prior to the date of the hearing on
3 the application. A certified copy of the order reversing and dismissing the conviction
4 shall be attached to an order of expungement."

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

6 "**§ 15A-1382. Reports of disposition; ~~fingerprints~~-fingerprints and DNA samples.**

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

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

21 (c) If a convicted felon did not have a DNA sample taken pursuant to G.S. 15A-
22 502A prior to the disposition of the case, then a DNA sample shall be taken from the
23 felon in accordance with Article 13 of this Chapter and submitted to the State Bureau of
24 Investigation along with the report of the disposition of the charges on forms supplied by
25 the State Bureau of Investigation as provided by Article 13 of this Chapter."

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

27 "**§ 7A-608.1. Fingerprinting and DNA sample from juvenile transferred to superior**
28 **court.**

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

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

34 Section 9. By January 1, 2001, the Department of Justice shall develop and
35 establish pilot programs to implement this act in Halifax, Robeson, and Forsyth Counties.

36 Section 10. There is appropriated from the General Fund to the Department of
37 Justice the sum of forty thousand dollars (\$40,000) for the 2000-2001 fiscal year to
38 implement the pilot programs established in Section 9 of this act.

39 Section 11. Sections 9, 10, and 11 of this act are effective when it becomes
40 law. The remainder of this act becomes effective December 1, 2001.