

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 2015

Short Title: DNA Sample/Felony Arrest.

(Public)

Sponsors: Senator Berger of Rockingham.

Referred to: Appropriations/Base Budget.

May 26, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A SALIVA SAMPLE BE TAKEN FOR DNA ANALYSIS FROM ANYONE ARRESTED FOR THE COMMISSION OR ATTEMPTED COMMISSION OF A FELONY OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 15A of the General Statutes is amended by adding the following sections to read:

"§ 15A-266.7A. Sample required for DNA analysis upon arrest for felony offense.

(a) Unless a DNA sample has previously been obtained by lawful process and stored in the State DNA database, and that sample has not been expunged pursuant to G.S. 15A-148, on or after December 1, 2006, any person who is arrested for committing or attempting to commit any felony shall have a sample of his or her saliva taken for DNA analysis. The sample shall be taken prior to the person's release from custody. The sample shall be forwarded to the SBI to be stored and analyzed as provided by G.S. 15A-266.5 and G.S. 15A-266.8.

(b) The clerk of court shall notify the SBI of the final disposition of the criminal proceedings. If the charge for which the DNA sample was taken is dismissed or the defendant is acquitted at trial, the SBI shall destroy the DNA sample and records of the sample, provided there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the State DNA Database. In the event that a person, who is arrested for a felony, is later convicted only for a misdemeanor whether by adjudication or by entering a plea of guilty to the misdemeanor, the DNA sample and records of the sample shall be retained.

"§ 15A-266.7B. Procedure for taking sample for DNA analysis after arrest for felony offense.

(a) Each DNA sample required by G.S. 15A-266.7A shall be taken before the arrested person is released from custody at the place that is designated by the law enforcement agency responsible for arrest booking in the jurisdiction. The sample shall

1 be taken by either a qualified member of the health profession or a law enforcement
2 officer trained to take DNA samples.

3 (b) No civil liability shall attach to any person authorized to take DNA samples
4 by this section as a result of taking the saliva sample, if the sample was taken according
5 to recognized medical procedures. No person shall be relieved from liability for
6 negligence in taking the DNA sample.

7 (c) Any DNA sample collected in accordance with this section shall be sealed
8 and labeled with all of the following: the subject's name, social security number, date of
9 birth, race, and gender; the name of the person collecting the sample; the date and place
10 of collection; information identifying the arresting or accompanying officer; and the
11 offense for which the person was arrested. The sample shall be secured to prevent
12 tampering with the contents and be accompanied by a copy of the arrest warrant or
13 capias. The steps set forth in this section relating to the taking, handling identification,
14 and disposition of the sample are procedural and not substantive. The sample shall be
15 transported to the SBI not more than 15 days following the taking of the sample and
16 shall be analyzed and stored in the State Database in accordance with this Article."

17 **SECTION 2.** G.S. 15A-266.2 reads as rewritten:

18 **"§ 15A-266.2. Definitions.**

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

- 21 (1) "CODIS" means the FBI's national DNA identification index system
22 that allows the storage and exchange of DNA records submitted by
23 State and local forensic DNA laboratories. The term "CODIS" is
24 derived from Combined DNA Index System.
- 25 (2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of
26 cells and provides an individual's personal genetic blueprint. DNA
27 encodes genetic information that is the basis of human heredity and
28 forensic identification.
- 29 (2a) "DNA blood sample" means a blood sample provided by any person
30 convicted of offenses covered by this Article or a blood sample
31 submitted to the SBI laboratory for analysis pursuant to a criminal
32 investigation.
- 33 (3) "DNA Record" means DNA identification information stored in the
34 State DNA Database or CODIS for the purpose of generating
35 investigative leads or supporting statistical interpretation of DNA test
36 results. The DNA record is the result obtained from the DNA typing
37 tests. The DNA record is comprised of the characteristics of a DNA
38 sample which are of value in establishing the identity of individuals.
39 The results of all DNA identification tests on an individual's DNA
40 sample are also collectively referred to as the DNA profile of an
41 individual.
- 42 (4) "DNA Sample" in this Article means a blood sample provided by any
43 person convicted of offenses covered by this ~~Article~~ Article, a saliva
44 sample provided by any person arrested for the commission or

1 attempted commission of a felony, or a sample submitted to the SBI
2 Laboratory for analysis pursuant to a criminal investigation.

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

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

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

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

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

20 "(a) Unless a DNA blood sample has previously been obtained by lawful process
21 and stored in the State DNA database, and that sample has not been expunged pursuant
22 to G.S. 15A-148, on or after December 1, 2003, a person who is convicted of any of the
23 crimes listed in subsection (b) of this section or who is found not guilty of any of these
24 crimes by reason of insanity and committed to a mental health facility in accordance
25 with G.S. 15A-1321 shall have a DNA blood sample drawn upon intake to jail, prison,
26 or the mental health facility. In addition, every person convicted on or after December
27 1, 2003, of any of these crimes, but who is not sentenced to a term of confinement, shall
28 provide a DNA blood sample as a condition of the sentence. A person who has been
29 convicted and incarcerated as a result of a conviction of one or more of these crimes
30 prior to December 1, 2003, or who was found not guilty of any of these crimes by
31 reason of insanity and committed to a mental health facility in accordance with
32 G.S. 15A-1321 before December 1, 2003, shall have a DNA blood sample drawn before
33 parole or release from the penal system or before release from the mental health
34 facility."

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

36 "**§ 15A-266.5. Tests to be performed on ~~blood-DNA~~ sample.**

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

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

40 (2) For law enforcement identification purposes.

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

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

- 1 b. To support identification research and protocol development of
2 forensic DNA analysis methods.
3 c. For quality control purposes.
4 d. To assist in the recovery or identification of human remains
5 from mass disasters or for other humanitarian purposes,
6 including identification of missing persons.

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

10 **SECTION 5.** The catch line for G.S. 15A-266.7 reads as rewritten:

11 "**§ 15A-266.7. Procedures for conducting DNA analysis of blood sample.**"

12 **SECTION 6.** The Department of Justice shall develop a training program for
13 criminal justice officers as defined in G.S. 17C-2 and justice officers as defined in
14 G.S. 17E-2 on how to take saliva samples from a person for DNA analysis. The
15 program shall include the recognized medical procedures used to collect or take saliva
16 samples for DNA analysis. The North Carolina Criminal Justice and Training
17 Standards Commission shall establish minimum standards and training levels for
18 criminal justice officers who will be required to take DNA samples as part of their
19 official duties. The North Carolina Sheriffs' Education and Training Standards
20 Commission shall establish minimum standards and training levels for justice officers
21 who will be required to take DNA samples as part of their official duties.

22 **SECTION 7.** There is appropriated from the General Fund to the
23 Department of Justice the sum of one hundred thousand dollars (\$100,000) for the
24 2006-2007 fiscal year to assist with the costs of implementing this act and of storing and
25 analyzing additional DNA samples. The Department of Justice shall give top priority to
26 the processing and analysis of DNA blood sample kits, but shall also process and
27 analyze DNA saliva sample kits as quickly as possible. In the event that funds
28 appropriated for the processing and analysis of DNA sample kits are insufficient, then
29 the Department of Justice shall use funds available from settlements of civil cases that
30 have undesignated recoveries.

31 **SECTION 8.** This act becomes effective July 1, 2006.